Draft Environmental Impact Statement Prepared on the Proposed Washington Coastal Zone Management Program Amendment No.1: Deletion of the Evans Policy Statement

Washington, D. C.
November 1978

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management

DRAFT ENVIRONMENTAL IMPACT STATEMENT

PREPARED ON THE PROPOSED WASHINGTON COASTAL ZONE MANAGEMENT PROGRAM

AMENDMENT #1: DELETION OF THE EVANS POLICY STATEMENT ON OIL PORT LOCATION

Washington, D.C.
November 1978

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of Coastal Zone Management

Summary

(x) Draft Environmental Impact Statement

( ) Final Environmental Impact Statement

Department of Commerce, National Oceanic and Atmospheric Administration, Office of Coastal Zone Management. For additional information about this proposed action or this statement, please contact:.

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National Oceanic and Atmospheric Administration 3300
Whitehaven Street, N.W. Washington, D.C.
202/254-7100

Written comments should be forwarded to the Pacific Regional Manager at the above address.

1. Type of Action

Proposed amendment to the Washington Coastal Zone Management Program deleting the Evans Policy Statement on oil port location.

(x) Administrative ( ) Legislative

2. Brief Description of the Proposed Action The proposed action is the approval by the Assistant Administrator for Coastal Zone Management of the deletion of four paragraphs* on page 136 from the approved Washington Coastal Zone Management Program. This text deals with the siting of a single major crude petroleum transfer site at or west of Port Angeles. These paragraphs will be referred to in this document as the "Evans policy" or "Evans Policy Statement". The action is proposed in response to a request that the Office of Coastal Zone Management received from Governor Dixy Lee Ray of the State of Washington.

3. Summary of Environmental Impacts and Adverse Environmental Effects The legal analysis performed as part of the OCZM Review of the proposal to delete the Evans Statement from the Washington Coastal Zone Management Program has shown the policy statement to be unenforceable under both State and Federal law. Deletion of this unenforceable policy will not decrease the protection under state or Federal law afforded the resources of Puget Sound and the Straits of Georgia and Juan de Fuca. Any persuasive effect that this policy may have on current decisionmakers is independent of its inclusion in or exclusion from the Washington Coastal Zone Management Program. This policy, which lacks force of law or regulation, derives no legal force from its incorporation in the WCZMP. The Office of Coastal Zone Management has determined, therefore, that the proposed Federal action will not have any identifiable direct and significant impact on the quality of the human environment. The intense interest and controversy surrounding the proposed deletion of the Evans policy statement, however, prompts this Office to provide full opportunity for open, public review of the proposed amendment through the EIS process.

4. Alternatives Considered

A. Approve the proposal to delete the Evans Policy Statement for reasons other than its lack of enforceability, that is:

1. because there are currently adequate assurances of protection of the Puget Sound environment; or,

2. in order to resolve concerns that the Evans Policy Statement was not properly incorporated into the Washington CZM Program.

B. Delay approval of the proposal to delete the Evans Policy Statement:

1. until after the energy facility siting element pursuant to Section 305(b)(8) of the CZMA has been approved as part of the management program; or,

2. until misinterpretation of the State policy statement on page 17 of the Program regarding transshipment sites is resolved.

C. Deny approval of the proposal to delete the Evans Policy Statement: because deletion might adversely impact the national interest in Puget Sound as expressed by the Magnuson Amendment to the Marine Mammal Protection Act (P.L. 95-136).

D. No action: the State could withdraw the amendment request.

5. List of all Federal, State and local agencies who have been given the opportunity to comment on this document:

Federal Agency Distribution

Advisory Council on Historic Pres.
Department of Defense
  Department of the Navy
  U.S. Air Force
  U.S. Army Corps of Engineers
Department of Agriculture
Department of Commerce
Department of Energy
Department of Health, Edu. and Welfare
Department of Housing and Urban Dev.
Department of the Interior
Department of Justice
Department of Labor
Department of Transportation
Environmental Protection Agency
Federal Energy Regulatory Commission
General Services Administration
Marine Mammasl Commission
Nuclear Regulatory Commission
U.S. Coast Guard

National Interest Group Distribution

AFL-CIO
American Association of Port Authorities
American Bureau of Shipping
American Fisheries Society
American Gas Association
American Industrial Development Council
American Institute of Merchant Shipping
American Oceanic Organization
American Petroleum Institute
American Shore and Beach Preservation Association
American Society of Civil Engineers
American Society of Planning Officials
American Water Resources Association
American Waterways Operators
Amoco Production Company
Ashland Oil, Inc.
Association of Oil Pipelines
Atlantic Richfiled Company
Boating Industry Association
Center for Natural Areas
Chamber of Commerce of the United States
Chevron, USA, Inc.
Coastal States Organization
Conservation Foundation
Continental Oil Company
Council of State Governments
Council of State Planning Agencies
The Cousteau Society
CZM Newsletter
El Paso Natural Gas Co.
Environmental Policy Center
Environmental Defense Fund, Inc.
Environmental Law Institute
EXXON Company, U.S.A.
Getty Oil Company
Gulf Energy and Minerals, U.S.
Independent Petroleum Association of America
Industrial Union of Marine and Shipbuilding Workers of America
Institute for Marine Studies
Interstate Natural Gas Association of America
League of Women Voters Education Fund
Marathon Oil Company
Marine Technology Society
Mobile Oil Corporation
Murphy Oil Company
National Association of Conservation Districts
National Association of Counties
National Association of Dredging Contractors
National Association of Engine and Boat Manufacturers
National Association of Regional Councils

National Association of State Boating Law Administrators
National Audubon Society
National Boating Federation
National Coalition for Marine Conservation, Inc.
National Commission on Marine Policy
National Conference of State Legislatures
National Environmental Development Association
National Federation of Fishermen
National Fisheries Institute
National Governors Association
National League of Cities
National Ocean Industries Association
National Petroleum Council
National Petroleum Refiners Association
National Wildlife Federation
National Waterways Conference
Natural Gas Pipeline Company of America
Natural Resources Defense Council
The Nature Conservancy
Outboard Marine Corporation
Shell Oil Company
Shellfish Institute of North America
Shipbuilders Council of America
Sierra Club
Skelly Oil Company
Society of Industrial Realtors
Sport Fishing Institute
Standard Oil Company
Sun Oil Company
Tenneco Oil Company
Texaco, Inc.
Union Oil Company of California
U.S. Conference of Mayors
Water Transport Association
Western Oil and Gas Association
Wildlife Management Institute
World Dredging Association

State Distribution

201 State and Local Agencies and Interested Parties

6. This Draft Environmental Impact Statement was filed at the Environmental Protection agency on 11/17/78. The Notice of Availability of this document appeared in the Federal Register on 11/24/78. The comment period will close on 1/30/79.

NOTE: The Final Impact Statement will be sent to all parties who comment on the Draft Environmental Impact Statement, and all who request a copy of the document.

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PART ONE:

INTRODUCTION

A. The Federal Coastal Zone Management Act

In response to intense pressures, and because of the importance of coastal areas of the United States, Congress passed the Coastal Zone Management Act (P.L. 92-583) (hereinafter referred to as the CZMA or the Act) which was signed into law on October 27, 1972. The Act authorized a Federal grant-in-aid program to be administered by the Secretary of Commerce, who in turn delegated this responsibility to the National Oceanic and Atmospheric Administration's (NOAA) Office of Coastal Zone Management (OCZM). The Coastal Zone Management Act of 1972 was substantially amended on July 26, 1976, (P.L. 94-370). The Act and the 1976 amendments affirm a national interest in the effective protection and development of the coastal zone, by providing assistance and encouragement to coastal States to develop and implement rational programs for managing their coastal zones.

Broad guidelines and the basic requirements of the CZMA provide the necessary direction for developing these State programs. These guidelines and requirements for program development and approval are contained in 15 CFR Part 923, as revised and published March 1, 1978, in the Federal Register. In summary, the requirements for program approval are that a State develop a management program that:

(1) Identifies and evaluates those coastal resources recognized in the Act that require management or protection by the State;

(2) Reexamines existing policies or develops new policies to manage these resources. These policies must be specific, comprehensive and enforceable, and must provide an adequate degree of predictability as to how coastal resources will be managed;

(3) Determines specific uses and special geographic areas that are to be subject to the management program, based on the nature of identified coastal concerns. The basis for management use (or their impacts) and areas should be based on resource capability and suitability analyses, socio-economic considerations and public preferences;

(4) Identifies the inland and seaward areas subject to the management program;

(5) Provides for the consideration of the national interest in the planning for and siting of facilities that meet more than local requirements; and

(6) Includes sufficient legal authorities and organizational arrangements to implement the program and to insure conformance to it.

In arriving at these substantive aspects of the management program, States are obliged to follow an open process which involves providing information to and considering the interests of the general public, special interest groups, local governments, and regional, State, interstate and Federal agencies.

Section 305 of the CZMA authorizes a maximum of four annual grants to States to assist them in development of a coastal management program. After developing a management program, the State may submit it to the Secretary of Commerce for approval pursuant to Section 306 of the CZMA. If approved, the State is then eligible for annual grants under Section 306 to implement its management program. If a program has deficiencies which need to be remedied or has not received Secretarial approval by the time Section 305 program development grants have expired, a State may be eligible for preliminary approval and additional funding under Section 305(d).

Section 307 of the Act stipulates that Federal agency actions shall be consistent, to the maximum extent practicable with approved State management programs. Section 307 further provides for mediation by the Secretary of Commerce when a serious disagreement arises between a Federal agency and a coastal State with respect to a Federal consistency issue.

Section 308 of the CZMA contains several provisions for grants and loans to coastal States to enable them to plan for and respond to on-shore impacts resulting from coastal energy activities. To be eligible for assistance under Section 308, coastal States must be receiving Section 305 or 306 grants, or, in the Secretary's view, be developing a management program consistent with the policies and objectives contained in Section 303 of the CZMA.

Section 309 allows the Secretary to make grants (90 percent Federal share) to States to coordinate, study, plan, and implement interstate coastal management programs.

Section 310 allows the Secretary to conduct a program of research, study, and training to support State management programs. The Secretary may also make grants (80 percent Federal share) to States to carry out research studies and training required to support their programs.

Section 315 authorizes grants (50 percent Federal share) to States to acquire lands for access to beaches and other public coastal areas of environmental, recreational, historical, aesthetic, ecological, or cultural value, and for the preservation of islands, in addition to the estuarine sanctuary program to preserve a representative series of undisturbed estuarine areas for long-term scientific and educational purposes.

B. Review of Events Leading to the Proposed Action

After passage of the CZMA in 1972, the State of Washington was one of the first coastal states to express interest in the new grants-in-aid program administered pursuant to the Act by the Department of Commerce. Coastal resource management had already been acknowledged to be an important State concern with the passage by the State Legislature of the Shoreline Management Act in 1971. Comprehensive coastal management program development was accelerated with the additional Federal monies.

On February 14, 1975, the then Governor Daniel J. Evans, submitted to OCZM on behalf of the State of Washington, a preliminary draft coastal zone management program. The draft consisted of a description of the policies and procedures to be used in managing Washington's coastal resources and a documentation of the state laws and administrative regulations.

Comments on the Program were solicited at this time from Federal agencies in order to identify their coastal zone management concerns, activities, program problems and expectations. These comments assisted the Department of Ecology, the lead State agency for coastal management, in the revision of the preliminary document. The revised draft of the Program was distributed to Federal agencies and the general public for comment in March of 1975. In addition, the draft environmental impact statement on the Program was the subject of a joint OCZM/Department of Ecology hearing of April 22, 1975.

The major concerns which surfaced during the review period dealt with Federal/State relationships, the State's organizational network, and a lack of clarity in the description of some of the substantive Program elements. Preliminary approval of the WCZMP was granted by the Secretary of Commerce in May 1975, and the State was given a supplemental development grant to work intensively on the concerns described above.

Formal review of the proposed coastal zone management program by Federal agencies began in March of 1975. Letters of comment to OCZM identified concerns about the specificity and clarity of State policies with respect to energy facility siting, planning, and consideration of the national interest. Federal comments on the revised January 1976 draft document indicated that these concerns still had not been addressed by the State to the satisfaction of the Federal energy agencies. (See Attachment A)

Public concerns with respect to energy facilities and the protection of coastal resources surfaced repeatedly at the State level during this period of program development. On October 18, 1974, the Energy Policy Council, in its final recommendations to Governor Evans on oil transshipment and refinery production, found 1) that tanker traffic in the northern Puget Sound area should be limited to that required to serve existing refineries and that further expansions for pipeline transshipment or for processing should be sites at or west of Port Angeles, or along the Washington coast, if feasible; 2) that pipeline transport has the best combination of economic and environmental advantages; and 3) that expansion of refining

capacity in the northern Puget Sound area should be limited to levels necessary to satisfy growth in historic marketing areas. In 1975, a study by the Oceanographic Commission determined that legislation was needed to establish State oil transportation policy. The Legislature responded in 1975 by passing the State Tanker Law, which stipulated that no tanker exceeding 125,00 dwt may enter Puget Sound and that 40,000-125,000 dwt tankers may enter only if they meet safety standards or consent to tug escort and use a Puget Sound pilot. Although much of this law was later invalidated by the Supreme Court decision in September 1976, Ray v. ARCO, its passage represented a clear political statement of the desires of the people of the State of Washington to protect the Sound from the potential adverse effects of oil spills.

Continuing public concern about the adverse effects of oil transshipment was reaffirmed in a four-point oil transportation policy paper issued by the Oceanographic Commission of Washington in late December 1975. This called for construction of a bulk crude transfer facility as part of a single, common use terminal along the Strait of Juan de Fuca in order to minimize tanker traffic across the Sound. This recommendation was reiterated in a letter of March 1976 from the Coalition Against Oil Pollution to Governor Evans. The Coalition also urged the Governor to include in the State's CZM Program, the concept of a single common-use oil port at Port Angeles.

In response to State and Federal concerns, Governor Evans submitted a series of amendments and modifications to the WCZM Program at the end of March 1976. These included more specific energy facility siting and planning provisions, including a policy statement calling for the siting of a single major crude petroleum transfer site at or west of Port Angeles. This statement was printed on p. 136 of the Final Program document. (See Attachment B) The Washington coastal zone management program was granted full Federal approval in June of 1976, and the state has remained eligible since that time for funding under §306 of the Federal act.

During March 1976, the State Legislature had enacted Substitute Senate Bill 3172 which expanded the jurisdiction of the Thermal Power Plant Site Evaluation Council (TPPSEC) to include most major energy facilities and transmission pipelines. TPPSEC's name was changed to the Energy Facility Site Evaulation Council (EFSEC) to reflect its new responsibilities.

In January 1977, Governor Evans was succeeded in office by Governor Dixy Lee Ray. In the first legislative session of the new Governor's term, the Legislature passed on May 23, 1977, Substitute House Bill No. 743 in an attempt to make law the concepts embodied in the Evans Policy Statement. The bill limited future additional marine bulk crude petroleum shipment transfer facilities to one such facility to be located on the Strait of Juan de Fuca at or west of Port Angeles. However, the Governor vetoed the bill in July of 1977 and the Legislature failed to override her veto. In her message to the Legislature, the Governor cited three reasons for her veto: first, that the siting limitations imposed by the bill were too restrictive; second that neither the economic nor the environmental consequences of the restrictions had been adequately analyzed; and third that a mechanism already existed in law for thorough fact finding and thought-

ful review of all energy facility siting and transportation alternatives in the State, namely EFSEC.

In a letter dated July 20, 1977, to Secretary of Commerce Juanita Kreps, Governor Ray requested deletion from the Washington CZM Program of the Evans Policy Statement. She stated her support of the existing EFSEC process as the appropriate public forum for evaluating completely and comprehensively applications for the siting of modification of major energy energy facilities. The Governor noted further that deletion of the Evans policy from the Program would allow a more thorough evaluation of the costs and benefits of all oil transportation and energy facility siting alternatives in the State.

The Governor scheduled two public hearings on the proposal to delete the Evans Policy in response to the intense public interest in the oil transport and transfer issue as evidenced by extensive media coverage during the Spring 1977 Legislative Session. The two hearings were conducted by the State Ecological Commission in the Fall of 1977. The transcripts of these two hearings and the environmental impact assessment of the proposal written by the Washington State Department of Ecology were among the resource materials used by the Office of Coastal Zone Management Staff to prepare this environmental impact statement.

C. Need for the Preparation of an EIS on the Proposed Action

Section 1500.6(a) of the Council on Environmental Quality guidelines for the preparation of environmental impact statements states that an EIS should be prepared for proposed major Federal actions "the environmental impact of which is likely to be highly controversial". The proposed amendment to delete the Evans policy has aroused controversy in the State of Washington over the perceived environmental impacts of such an action.

Concerns regarding the environmental impacts of deletion and retention of the policy have been expressed by Members of Congress representing the "Northern-tier" states, by Members of the Washington State Legislature, by State and local governments and by the general public, these concerns have been reported on extensively in the news media.

The Office of Coastal Zone Management has been made aware of the concerns through letters, meetings, newspaper clippings, and the transcripts of three public hearings held by the Ecological Commission of the State of Washington on the proposal to delete the Evans policy from the Washington Coastal Zone Management Program.

Many parties have expressed concerns that the deletion of the policy may have adverse effects on energy facility planning, resource protection, and the safety of tanker traffic on the Sound. Increased tanker traffic on Puget Sound could increase the likelihood of oil spills. Several studies have indicated that the tidal patterns, resources and coastal features unique to the Sound assure that it would sustain substantial environmental damage in the event of a major oil spill. Negative secondary impacts could also be expected due to the dependence of the Sound area's economy on recreation, tourism, and commercial fishing. Senator Warren G. Magnuson of Washington was sufficiently concerned about these impacts to sponsor an amendment to the Marine Mammal Protection (Pub. L. 95-136) which strictly limited oilport construction or expansion in Puget Sound. One Congressman expressed concern that deletion of the policy might further delay the siting of a transfer facility. In his view, a transfer facility must soon become operational to ensure that crude oil shortages do not adversely affect refineries in Montana. Many persons want the Evans policy to be retained in the belief that it would prevent these adverse impacts on the Sound.

Other parties have expressed concern that the retention of the policy may have major adverse environmental and socio-economic impacts on the Port Angeles area in Clallam County and along any pipeline route which would originate in Port Angeles and connect with the refineries on the east shore of the northern Sound. They believed that the policy would require any crude oil transshipment site to be located at or west of Port Angeles and residents of Clallam County have suggested that the impacts on their area of limiting oil transportation options were never carefully considered. Other parties are concerned that the hook-up prerequisite to refinery expansion would require construction of a major pipeline from Port Angeles to the refineries of the northern Sound. These observers contend that the construction process could create major socioeconomic disruption in the area of the

pipeline with the great influx of workers who would need housing and local government services. The environmental impacts to the waters of the Sound ranging from increased sedimentation to impacts from oil leaks have not yet been carefully assessed or considered. Parties favoring deletion of the policy cite these potential impacts in arguing that all oil transportation alternatives should be considered in the public forum such as the site certification process of EFSEC, and that the policy should be deleted to expand the consideration of options available.

In order to respond to, synthesize, and focus the controversy concerning the environmental impacts of the proposed action, the Office of Coastal Zone Management has prepared this EIS.

The purpose of this EIS is to disclose fully the impact of the removal of a controversial policy statement from the Washington CZM Program. In light of the conclusions concerning this impact that are reached in Part IV, OCZM determined that the merits of individual tanker terminal sites, energy transportation routes, and the supply of and demand for oil in the West or the Nation are beyond the required scope of this EIS.

However, a great deal of information describing the environment which could be affected by tanker traffic in Puget Sound and the associated energy sites and transportation routes can be found in the documents incorporated by reference in this EIS. The citations for these references appear in Attachment C. All references are available from the authors or sources listed, or can be reviewed at the Washington Department of Ecology Library in Olympia or at the Office of Coastal Zone Management in Washington, D. C.

D. THE WASHINGTON COASTAL ZONE MANAGEMENT PROGRAM

WCZMP Overview

Many authorities, techniques and general coordinative mechanisms are available to the State to ensure the effective management of the State's issued pursuant to that Acts. The Management goals of the Act place a strong emphasis upon achieving a balance between conservation and use of the shoreline. The Act states that, where alterations of the natural shoreline are permitted, use priorities should be established which ensure that uses unique to or dependent on use of the shoreline are preferred. To achieve these goals, the Act requires that local governments both develop shoreline master programs and administer a permit system for any substantial developments or modifications in the shoreline area. Permit decisions must be based on the local shoreline master program as approved and adopted as State regulations by the Department of Ecology, the lead agency for coastal zone management in the State of Washington.

The Shoreline Management Act also created an appeals process for local permit decisions. All shoreline permit applications, once acted on by the local governments, are reviewed by both the Department of Ecology and the Attorney General to ensure that they are consistent with the local shoreline master program, other State regulations, and Federal requirements. A permit decision can be appealed where disagreements exist, by the Department of Ecology, the Attorney General, or the applicant, to the Shorelines Hearing Board, an administrative, quasi-judicial body created by the Act.

The Shoreline Management Act is strongly supported by two other State statutes, the State Environmental Policy Act of 1971 (SEPA) and the Environmental Coordination Procedures Act of 1973 (ECPA). SEPA requires that environmental impact statements be prepared by all branches of State government including State agencies, municipal and public corporations, and counties, to accompany proposals for legislation and other major actions significantly affecting the quality of the environment. ECPA initiated a master permit application process intended to streamline procedures for obtaining environmental permits from State and local agencies and to provide better coordination and understanding between State and local agencies.

An important component of the WCZMP which is directly related to the proposed action addressed in this EIS is the energy facilities siting process established by the State Legislature effective March 1976. The siting of major energy facilities in the coastal zone (and throughout the State) is subject to the site review and certification process identified in Chapter 80.50 RCW Energy Facilities—Site Locations, rather than to the permit process of the SMA. Major energy facilities include those which have the capacity of receiving more than an average of 50,000 barrels per day of crude or refined petroleum which has been or will be transported over marine waters.

RCW 80.50 establishes the Energy Facility Site Evaluation Council (EFSEC), which has the authority to preempt local land use plans or zoning ordinances in order to recognize greater than local needs in energy development. However, if EFSEC approves a request for preemption, it will

include conditions in the draft certification agreement which give due consideration to governmental or community interests affected by the construction or operation of the energy facility, and to the purposes of laws and regulations promulgated thereunder that are preempted or superseded (WAC 463-28-070). The EFSEC process is diagramed in figure 1.

WCZMP: Primary Management Agencies

The Department of Ecology is designated as the lead agency for the coastal zone management program. It is responsible for monitoring the development of local shoreline master programs and for monitoring local compliance with them once approved, through the permit review process. It is the agency designated to receive Federal CZM funds and to review Federal consistency determinations. As the implementing agency for the Environmental Coordination Procedures Act of 1973, it also coordinates the master application process for environmental permits in the State.

Another State agency having substantial management responsibility in the coastal zone is the Department of Natural Resources. Under State law, DNR is the management agency for all of the State-owned tidelands, harbor areas, marine beds, and uplands.

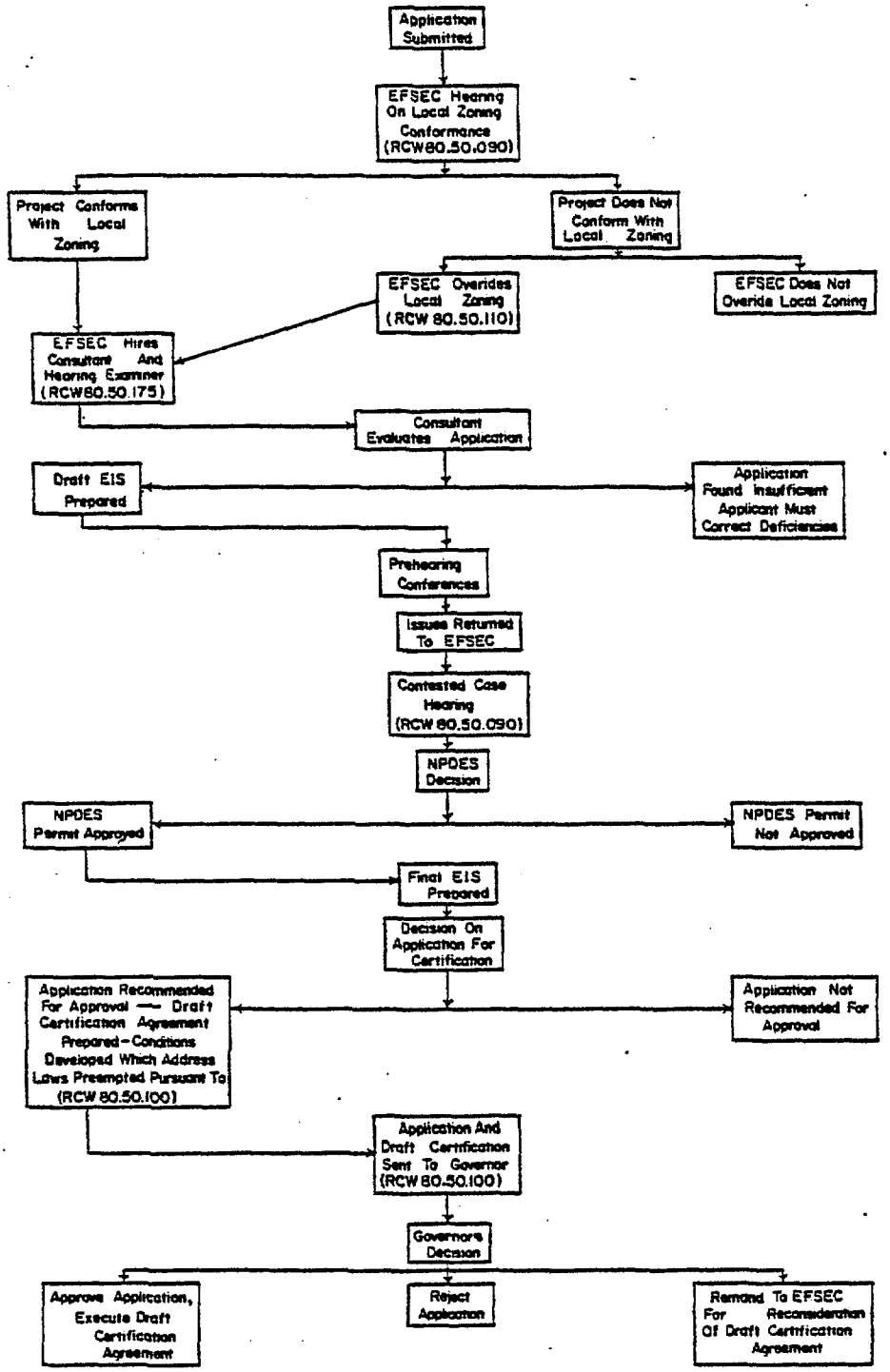
The Shoreline Hearings Board is an important agency in coastal zone management. This Board is an administrative appeal body with resource expertise, set up by the SMA to review appeals of local permit decisions made pursuant to the SMA and the approved local master programs.

Fourteen State agencies as well as affected local governments (i.e., cities, counties, and port districts) are represented on EFSEC to provide coordination among the diverse State and local interests affected by the siting of energy facilities and to provide a range of expertise to the decision-making process.* EFSEC receives applications for the siting of energy facilities and provides substantial technical review and public involvement throughout the process.

*Many other State agencies also play a role in management of coastal resources. A full list of agencies is included in the final CZM program document for the State of Washington published in June 1976.

FIGURE 1

THE EFSEC PROCESS



PART TWO:

DESCRIPTION OF THE PROPOSED ACTION

II. DESCRIPTION OF THE PROPOSED ACTION

The proposed action is the approval by the Assistant Administrator of the deletion from the Washington State Coastal Zone Management Program (WCZMP) of "A Policy Statement by Governor Daniel J. Evans on the Siting of a Single Major Crude Petroleum Transfer Site at Port Angeles," (hereinafter referred to as the "Evans Statement"). The Evans Statement appears at page 136 of the June 1976 version of the WCZMP, and is included here as Attachment B. Its deletion was requested by Governor Dixy Lee Ray of Washington in a letter of July 20, 1977, to U.S. Secretary of Commerce Juanita M. Kreps.

Policies

The Evans Statement contains two policies concerning the siting and expansion of petroleum terminal facilities in the Washington coastal zone. The first of these provides:

> "The State of Washington, as a matter of overriding policy, positively supports the concept of a single, major crude petroleum receiving and transfer facility at or west of Port Angeles. This policy shall be the fundamental, underlying principle for state actions on the North Puget Sound and Straits oil transportation issue and is specifically incorporated within the [WCZMP]. State programs, and specifically state actions in pursuit of the intent of Federal consistency, shall be directed to the accomplishment of this objective. Further, it is the policy of the Washington coastal zone management program to minimize adverse effects in the area, and to seek mitigation of unavoidable adverse impacts."

Port Angeles is located on the northern coast of the Olympic Peninsula. The policy just quoted would thus be violated by the siting of a major crude petroleum receiving and transfer facility on Puget Sound or on the Strait of Georgia.

The second policy contained in the Evans Statement states:

> "The offloading facility and transportation system at Port Angeles shall be designed to include provisions to supply existing refineries in Whatcom and Skagit Counties. Unless specific plans and firm commitments to connect to the Port Angeles facility are included, individual expansions to existing offloading facilities or proposals to deepen channels to accomodate deeper draft vessels are considered inconsistent with the single terminal concept as incorporated in the [WCZMP]."

The reference to existing refineries in Whatcom and Skagit counties is primarily to the existing Cherry Point and March Point refineries on the Strait of Georgia.

Procedures

The requested deletion of the Evans Statement from the WCZMP would constitute an amendment or modification of the WCZMP pursuant to Section 306(g) of the CZMA, which provides, in relevant part:

> "Any coastal state may amend or modify the management program which it has submitted and which has been approved by the Secretary under this section, pursuant to the required procedures described [in CZMA Section 306(c)].... [N]o grant shall be made under this section to any coastal state after the date of such an amendment or modification, until the Secretary approves such amendment or modification."

In order to avoid an interruption of Federal funding under the second sentence just quoted, the State has sought OCZM's approval of the deletion of the Evans Statement before putting the deletion into effect.

The current procedures for amendment or modification of approved State coastal zone management program are prescribed in 15 CFR §923.81(c). Under this provision, a State requesting OCZM approval of a proposed amendment must submit the following materials to OCZM:

(1) A written request for the amendment from the Governor or from the head of the designated lead State agency for coastal zone management;

(2) A description of the proposed change;

(3) Justification for the proposed change;

(4) Evidence of public notice and a discussion of the degree and nature of public interest;

(5) An environmental impact assessment or a determination that the proposed amendment will not significantly change the environmental impacts of the approved program in its current form.

The purpose of these requirements, which the State of Washington has fulfilled with respect to this proposed amendment, is to assure that the Assistant Administrator for Coastal Zone Management has the information necessary to determine whether the requirements of Section 306(c) and (g) of the CZMA have been satisfied.

In considering the State's request for an amendment and the materials submitted in support thereof, the Assistant Administrator must, under the current regulations, follow the same procedures that are utilized for initial program approval. The procedures for cases like this one in which OCZM has determined an EIS to be appropriate are set forth in 15 CFR §923.72.

Under this section, all interested persons and Federal agencies normally have 45 days following publication of a notice of DEIS availability to comment on the DEIS. During this period, OCZM may hold one or more hearings on the proposed amendment in the State that has proposed it. At least fifteen days public notice of these hearings must be given, and the comment period should normally remain open for at least 15 days after the hearings have ended.

After the close of the comment period, OCZM will review, evaluate, and respond to the comments that have been received, in order to assure that the views of principally affected Federal agencies and other interested parties have been adequately considered and that the requirements of NEPA have been complied with. OCZM's responses will be incorporated as part of the final EIS, together with any changes in the DEIS that it finds necessary. Following publication in the Federal Register of a notice of availability of the FEIS, there will be a 30-day FEIS review period. OCZM will review and evaluate any comments received during this period, and will then approve or disapprove the amendment. If the amendment is approved, the Assistant Administrator will issue a set of findings demonstrating that all requirements of CZMA Section 306(c) and (g) have been met. Notice of the availability of these findings will appear in the Federal Register, and copies will be sent to all principally affected Federal agencies. If the Assistant Administrator decides not to approve a proposed amendment, the State shall be advised in writing of the reasons therefor, and notice of the decision shall be published in the Federal Register.

Background of the Evans Statement

The Evans Statement was added to the WCZMP very shortly before its approval on June 1, 1976. It was submitted to OCZM by Governor Daniel J. Evans of Washington, together with a number of other changes to the Program, in a letter of March 29, 1976, to Dr. Robert M. White, Administrator of NOAA at that time. The Evans Statement appeared as Appendix XI to the FEIS on the WCZMP, which was filed with the Council on Environmental Quality on April 9, 1976, and distributed to Federal agencies and the public on April 12, 1976. The review period on the FEIS expired on May 21, 1976.

The addition of the Evans Statement to the WCZMP was intended to "resolve the questions and concerns raised by the various reviewers of the program document." Among the "questions and concerns" were those expressed in the comments of certain Federal agencies on the DEIS, which

had been made available on March 21, 1975, and the comment period which had closed on May 10, 1975 (See Attachment A). The Federal Energy Administration, in a comment dated May 20, 1975, and the Federal Power Commission, in a comment dated May 12, 1975, had urged that the WCZMP deal with energy facility siting and the national interest therein in greater detail. On February 20, 1976, FEA reiterated its request for an "explicit and detailed statement of policy concerning the siting of energy facilities in the coastal zone." On March 3, 1976, the Energy Research and Development Administration expressed the belief

> "that the program should have some detailed statements of policy relating to energy facilities. It would be helpful if the program could identify areas especially useful for the siting of such facilities."

It was in response to comments like these that the Evans Statement was prepared by the staff of the Washington State Department of Ecology, presented to and signed by Governor Evans, and submitted to OCZM for inclusion in the WCZMP. It should be made clear, however, that, although Governor Evans was being responsive to the recommendations of Federal agencies in submitting the policy statement on oil terminal siting, the policy was not considered essential to the decision to approve the WCZMP made by the Assistant Administrator, by which he details how each section of the CZMA program approval requirements are met by the WCZMP.

The idea of limiting major oil tanker facility siting and expansion to the area at or west of Port Angeles was contained in a recommendation of the Washington Energy Policy Council to Governor Evans following a series of seven public hearings in October and November 1974. In addition, on December 22, 1975, the Washington Oceanographic Commission adopted a resolution urging the Governor and the Legislature to adopt a State oil transportation policy that would include as one of its points the limitation through January 1986 of new terminal construction to "a new single, common use crude oil terminal which could be built only at a site in the Port Angeles region."

WCZMP Provisions on Energy Facilities That Would Remain After Deletion of the Evans Statement.

Upon deletion of the Evans Statement, the siting of major energy facilities would continue to be governed, as it is now, and has been since March 1976, by the Washington energy facility siting statute, RCW Chapter 80.50, described on pages 92-94 of the June 1976 version of the WCZMP, and

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PART THREE:

DESCRIPTION OF THE ENVIRONMENT AFFECTED

Part III. Description of the Environment Affected by the Proposed Action.

A. Determination of the Environment Affected.

The purpose of the Port Angeles policy was to limit future oil tanker traffic to points at or west of Port Angeles thereby decreasing the risk of oil spills in Puget Sound. Therefore, the description of the environment affected is limited to Puget Sound and the Straits of Georgia and Juan de Fuca; in this discussion this complex of water will be cited simply as Puget Sound.

B. The Resources of the Setting.

The marine shoreline of the area covered by this description includes 144 miles along the Straits of Juan de Fuca and 1784 significant islands of the San Juan Archipelago. The importance of the Washington shoreline derives from the valuable physical and biological resources it contains as well as from its strategic location for international trade and national defense purposes. Many interests including timber harvest, industry, commercial fishing, recreation, tourism, second home development and agriculture compete for the coastal resources. Approximately two-thirds of the State's 3,658,000 residents reside in the coastal zone. Increased population growth over the last decade has intensified existing pressures for development of coastal resources. Interlocking patterns of public and private ownership of tidelands, bedlands, and uplands in the coastal zone create a situation which leads to inherent conflicts between the aspirations and desires of the upland owner, as often expressed in local land use planning, and the State's interests as the manager of the bedlands and tidelands.

The Natural Environment

The Puget Sound coastal area, including the Straits of Juan de Fuca and Georgia, is a complex system of interconnected inlets, bays, and channels with tidal sea water entering from the west, and freshwater streams entering at many points throughout the system.

The major landforms were determined by glacial activity and are characterized by rugged mountains and glacial valleys. The beaches are narrow and rocky and are backed by high forested bluffs. Rocky outcrops and islands are common offshore. Limited floodplains and deltas associated with the largest rivers provide the only low flatlands and excellent agricultural lands.

The climate of the entire area is maritime, with generally mild winter temperatures and cool, moderately dry summers. Nestled between the Olympics and the Cascades, the Puget Sound climate especially reflects marine influences. The two mountain ranges, combined with the prevailing ocean breezes, cause large variations in precipitation among localities. Precipitation varies from up to 200 inches per year in the mountains and western slope of the Olympic Peninsula to a more moderate 35 to 50 inches per year in Puget Sound to 17 inches per year in the rainshadow lowlands. Precipitation is seasonal, being heaviest from October to March and lightest in July and August. Heavy snowpack in the mountains, however, prolongs the

seasonal river discharge into the coastal zone. Abundant freshwater discharge plays a significant role in the great productivity of Puget Sound.

Puget Sound is a deep body of water with depths of 100 to 600 feet found less than one mile offshore. Shoal areas are virtually nonexistent and large tideflats and marshland areas are restricted to mouths of the major rivers - the Skagit Bay, Padilla Bay, and Samish Bay flats on the north and the Nisqually River delta on the south are the most notable. Small tideflats and marshes are found frequently in the numerous inlets in South Puget Sound and Hood Canal.

The shoreline resources of Puget Sound include few beach areas which are not covered at high tide. Bluffs ranging from 10 to 500 feet in height rim nearly the entire extent of the Sound making access to beach and inter-tidal areas difficult. For this reason, the relatively few accreted beaches which are not inundated at high tide are extremely valuable for public recreation purposes. The ubiquitous bluffs are also a serious topographic constraint to development, which has necessitated the filling of tidal estuarine and flatland areas for port and industrial activities. The estuaries that remain largely unaltered are highly valued, in part because of their increasing rarity.

Because of their glacial-till composition, the Puget Sound bluffs are susceptible to fluvial and marine erosion and can be serious slide hazards. Although the Sound is protected from the direct influence of Pacific Ocean weather, storm conditions can create very turbulent and occasionally destructive wave action. Without an awareness of the tremendous energy contained in storm waves, the development of shoreline resources can be hazardous and deleterious to the resource characteristics which make Puget Sound beaches attractive. Miles of physically unsuitable shorelines were committed to residential and recreational subdivisions before the recent upsurge of environmental analysis. Some areas have already experienced slide loss and others are known to be hazardous to future development.

Ten major rivers, fourteen minor rivers, and a great many small streams flow into Puget Sound. While most of the Sound's waters are usually well mixed, the areas near the mouths of major rivers will approach freshwater conditions during periods of continuous heavy rainfall. While mixing by strong winds occurs in some areas of the South Sound during winter months due to Pacific storm patterns, stratification often occurs in the late summer in sheltered South Sound bays.

Flooding within the coastal zone includes coastal type flooding which results from the high spring tides combined with strong winds from winter storms, riverine overbank flooding and the combination of the two. Storms that produce the surges also bring heavy rains and, therefore, the high river flows are held back by tides producing flooding at river mouths. Major damages occur within the flood plains which have experienced the greatest growth and development, and these are the streams draining westerly into Puget Sound.

Tidal circulation varies throughout the area. It is best in the North Sound, where relatively constricted channels and an open connection with the

ocean promote good circulation and poorest in the sheltered bays of the South Sound and Hood Canal. Because of the north-south axis of the Sound, there is a difference between the North Sound and the South Sound in terms of the flow of tides. A tide change at Olympia, on the southernmost portion of the Sound, will occur approximately one hour and fifteen minutes after a similar change at Port Townsend, at the north end of the Sound. Tidal amplitude also varies, being greatest in the southern portion of the Sound and decreasing generally toward the north. The tidal currents are variable and strong. Where affected by narrow passages or shallow, they may exceed seven knots.

Flushing of Puget Sound waters occurs annually during the spring and summer, except in the lower South Sound and Hood Canal. Cold, highly saline, low-oxygenated water, upwelling in the Pacific Ocean along the Washington coast, enters and slowly spreads at depth throughout the Sound, displacing the existing water mass and flushing it out along the surface.

The marine waters of the State, except for population and industrial development concentrations, are generally of excellent quality. Most areas are essentially free from major pollution sources. State-established water quality standards are rarely violated in coastal waters at any time of the year and nutrient values and dissolved oxygen levels are normally above the State standard. However, major water pollution problems exist in the heavily industrialized areas and large population centers of Puget Sound.

Fisheries and Wildlife Resources

Puget Sound area waters are rich in nutrients and support a wide variety of marine fish and shellfish species. An estimated 2,820 miles of stream are utilized by anadromous fish for spawning and rearing throughout the area, including chinook, coho, sockeye, pink and chum salmon, steelhead, searun cutthroat and Dolly Varden trout. All these species use Puget Sound as a migration and nursery area. Their offspring spend varying amounts of time in the shore waters of the area before moving to sea to grow to maturity.

Major species of marine fish inhabiting the Sound are Pacific cod, dogfish, skate, lingcod, sablefish, Pacific hake, starry flounder, Pacific halibut, ratfish, lingcod, sablefish, Pacific hake, starry flounder, Pacific Bait and forage fish include Pacific herring, smelt and anchovies. Herring use the shallow end of many inlets and bays of the Sound for spawning purposes. All of these species are important food sources for other fish.

Puget Sound has historically supported substantial fish populations. However, with the development of the surrounding area, some of these fisheries, particularly in the Southern Sound, have declined. The principal causes of the decline have been habitat degradation brought about by industrial and domestic wastes and unfavorable land use practices, direct habitat destruction through diking and land fills, construction of upstream water development projects, and poor timber harvesting practices. The effect of dikes and fills on fish populations is not clearly understood, but a substantial loss of nursery and rearing habitat has occurred.

The decline in fisheries is partially balanced by the fact that aquaculture or sea farming is beginning to come into its own in the Puget Sound complex. The mass production of seaweed, clams, geoducks, scallops, shrimp, oysters, small salmon, lobsters and other marine biota looms as an important new industry. Effective shoreline management is particularly crucial to the success of sea farming. Aquaculture on any scale can coexist with maritime shipping and shorelands industrial activities only by careful planning and regulation.

Puget Sound is an important resting place, feeding area and wintering ground for many thousands of birds in the Pacific Flyway. Major waterfowl species include Mallard, pintail, canvasback, ruddy, harlequin, ringnecked, and wood duck, widgeon, scaup, goldeneye, green-winged teal, shoveler, Canada, lesser Canada and snow geese, and black brant. Merganser, scoter and American coot will also be found. The most common shorebirds are gulls and terns. Great blue herons are common salt marsh birds.

The major wintering areas for waterfowl in Puget Sound are the Skagit, Snohomish and Nisqually flats, and Padilla/Samish Bays. Each small bay and inlet provides a discrete area for a portion of the total waterfront inhabitants' population. For example, twenty to thirty thousand snow geese winter in Skagit Bay - the only concentration of these geese found in the State of Washington. Waterfowl hunting is a major recreational activity on the Sound in fall and early winter. Nearly one-third of Washington's duck and goose hunting occurs in Puget Sound.

Harbor seals, killer whales and porpoise are commonly found in Puget Sound, and mammals inhabiting adjacent freshwater areas include beaver, muskrat, mink, weasel, otter and racoon.

The development of the Puget Sound area has brought with it a noticeable deterioration of wildlife resources due to habitat disruption, though the loss of wildlife habitat has not been quantified. An important need in obtaining relevant information on habitat loss is the analysis of the impact of incremental fills and small-scale developments.

Commerce and Economic Development

Puget Sound is the West Coast's largest deep water protected body of water and the focus of shipping and industry in the Pacific Northwest; primary ports are at Port Angeles, Bellingham, Everett and Seattle-Tacoma. The use of Puget Sound by deep-draft vessels coming from the developing Asian countries has increased as international trade has increased. The Sound's excellent harbors, its refineries, and its proximity to Alaska, also make the area a prime candidate for receiving oil from Alaska.

Current crude oil deliveries by tanker to refineries on Puget Sound average 962,500 tons per month; most of this traffic follows routes through the northern Sound counties of Clallam, Island, San Juan, Skagit and Whatcom.

The tourist, recreational and second home industries are among the fastest growing businesses in Puget Sound. Currently ranked behind food, manufacturing and forest products, the tourist industry has been projected

in some studies to assume the number one position by the year 2000. The importance of water-related recreation as an industry is indicated by the fact that the resident population has the highest boat ownership per capita in the nation. The need to increase recreational boating facilities while maintaining a high quality environment is a serious problem. In fact, the location of new boating facilities which will meet State and Federal environmental standards and yet be consistent with local land use desires is one of the major resource management issues confronting Puget Sound. In the northern Sound counties, tourism is a multi-million dollar industry. Hotel and motel receipts in these counties during 1976 totaled $14,511,000. Marine angler trips totaled 305,000 in these counties in 1975.

Food products (fishing and agriculture) and timber-related industries are the major industrial establishments in the region, although here, too, the tourist and recreation industries are playing an increasingly important role. Fishing activity dominates the northern Puget Sound area.

PART FOUR:

PROBABLE IMPACTS OF THE PROPOSED ACTION

IV. PROBABLE IMPACT OF THE PROPOSED ACTION ON THE ENVIRONMENT

A. BACKGROUND

If deletion of the Evans Statement from the WCZMP were to have any significant effect on the quality of the human environment, it could only be because the Statement's present inclusion in the Program imposed legal restrictions on decision making affecting the environment of Puget Sound that would be eliminated if the Statement were removed. In order to assess the significance of the effect that the Statement's deletion would have on the quality of the environment, it is, therefore, necessary to determine the Statement's present legal effect as part of the WCZMP. This requires an analysis of the status of the Evans Statement under both State law and the Federal Coastal Zone Management Act of 1972.

B. THE EFFECT OF THE EVANS STATEMENT UNDER WASHINGTON STATE LAW

In 1976, Washington adopted a basic statute to regulate the siting of proposed energy facilities like the one that is the subject of the Evans Statement. This statute is codified as Chapter 80.50 of the Revised Code of Washington (RCW). It establishes an Energy Facility Site Evaluation Council (EFSEC), composed of representatives from 14 State agencies, plus representatives of the county and port district in which a proposed facility under EFSEC consideration would be located. (RCW §80.50.030) EFSEC is authorized, among other things, to adopt as rules comprehensive environmental and ecological guidelines relating to the type, design and location of energy facilities; and to receive and evaluate applications for State certification of proposed major energy facility sites. Among the types of facilities which must receive such certification before they may be constructed in Washington are new projects and expansions

> "which will have the capacity to receive average of fifty thousand barrels per day of crude or refined petroleum or liquified petroleum gas which has been or will be transported over marine waters ..." (RCW §80.50.020(10), (14)(c) and §80.50.060(1))

The type of major facility referred to in the Evans Statement would receive each day an average of far more than fifty thousand barrels of crude petroleum transported over marine waters, and the conversion of any existing facility into such a terminal would involve the addition of more than fifty thousand barrels per day capacity.

After receiving an application accompanied by the required fee, EFSEC must commission a consultant to measure the environmental consequences of the proposed energy facility at each prospective site. (RCW §80.50.071) The State Attorney General is required to appoint a "counsel for the environment" to represent the public interest in protection of the quality of the environment throughout the certification proceeding. (RCW §80.50.080)

Before recommending the grant or denial of site certification to the Governor, who has the ultimate decisionmaking authority, EFSEC must hold a public hearing, conducted as a "contested case" under RCW Chapter 34.04, the Washington Administrative Procedure Act. This type of proceeding is an approximate counterpart of the formal adjudication prescribed in the Federal Administrative Procedure Act, and dealt with in detail in 5 U.S.C. §554 and §§556-557. The essence of such proceedings is reasoned decisionmaking based exclusively on a record composed of evidence introduced at a quasi-judicial hearing. At the hearing, any person or agency is entitled to be heard in support of or in opposition to the application. (RCW §80.50.090(3) and §80.50.020(3)). EFSEC may hold such additional public hearings as it may deem appropriate. (RCW §80.50.090(4)).

Within twelve months after receiving an application, EFSEC must recommend that the Governor either grant or deny certification of the proposed site. With the consent of the applicant and Council, this time limit may be extended. If the Council recommends certification, it must also submit to the Governor a draft certification agreement. Within 60 days after receiving EFSEC's recommendation, the Governor must grant or deny certification, or require Council reconsideration of the terms of the draft certification agreement. In reconsidering the draft agreement EFSEC may either rely on the existing record or reopen the contested case for the receipt of further evidence. (RCW §80.50.100).

The Governor's grant or denial of certification is subject to judicial review under RCW 34.04. The standard of review used by the court would be that set forth for review of contested cases in RCW §34.04.130(5), under which administrative action may be set aside if in violation of law, arbitrary or capricious, or "clearly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislature authorizing the decision or order." In cases construing RCW §34.04.130, the Washington Supreme Court has held the "clearly erroneous" standard to permit broader judicial review of evidence than was authorized under the previous "material and substantial evidence" test; and administrative action may be held to have been "clearly erroneous" even if there is evidence in the record to support it if the court can fairly conclude that "a mistake has been committed." Ancheta v. Daly, 77 Wash. 2d 255, 461 P. 2d 531 (1969); Stempel v. Department of Water Resources, 82 Wash. 2d 109, 508 P. 2d 166 (1973).

Except when irregularities are alleged, judicial review of a contested case must be based solely on the record as compiled by the agency. Upon request, the court must hear oral argument and receive written briefs. (RCW §34.04.130(5)).

It is unclear whether, in making her final decision in a certification case, the Governor must rely upon the record as developed during the EFSEC hearings or may consider other evidence that she finds suitable for inclusion in the record. Allowing the Governor to introduce and consider unilaterally evidence that had not been presented to EFSEC would appear to defeat the purpose of the contested case proceeding. It would, in particular, encourage persons who did not want their contentions subject to rigorous cross-examination and rebuttal before the Council to delay their full parti-

cipation until the proceeding had reached the Governor. Since it is highly improbable that the Washington Legislature intended this result, the better view appears to be that the Governor, the Council, and all interested parties are bound by the record developed through the contested case proceeding before EFSEC. In any event, as will be noted in more detail below, the Governor's decision must be supportable by evidence: the mere invocation of a nonlegislative policy will be insufficient unless there is independent factual support for that policy, or unless that policy has been adopted as part of a rule or regulation.

A site certification executed by the Governor under RCW Chapter 80.50 supersedes all other State and local agency permits, certifications and similar documents that would otherwise be required for the proposed energy facility, including development permits under the Shoreline Management Act. (RCW §80.50.110(2), §80.50.120, and §90.58.140(8)).

The EFSEC statute is thus the exclusive mechanism provided by Washington State law for the siting and expansion of major proposed energy facilities of the nature and magnitude of those with which the Evans Statement is concerned. As a result, the Evans Statement can be considered to have binding force under State law only if it can legally limit the discretion of the Governor, the final decisionmaker in the statutory siting process, in granting or denying certification after receipt of a recommendation from EFSEC. It does not appear that the Evans Statement has such actual legal effect.

The Evans Statement is a policy pronouncement of Governor Evans, apparently made pursuant to his constitutional and statutory authority to supervise the operations of the executive branch of the State Government. As a practical matter, therefore, it may have heavily influenced, if not legally controlled, decision-making by executive officials subordinate to Governor Evans. The decision maker for the siting of the type of facility dealt with in the Statement is now, however, Governor Ray. It is inconceivable that the exercise by one Governor of his supervisory authority over subordinate officials in the executive branch could in any way limit the activities of his successor, unless the directive in question had taken the form of a rule or regulation. In the latter case, the Evans Statement would come within the definition of "rule" that appears in the Washington Administrative Procedure Act. This definition includes

> "... any agency... directive... of general applicability... (c) which establishes, alters or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law ..." (RCW §30.40.010(2)).

In issuing the Statement, however, Governor Evans did not comply with the rulemaking procedures prescribed in RCW §34.04.025(1) and §34.04.030. These procedures include public notice and comment and, under certain circumstances, oral hearings on proposed rules. No rule is valid under Washington law unless it is adopted in substantial compliance with these procedures, something that plainly was not done in the case of the Evans Statement. The Evans Statement thus does not have the effect of a rule under Washington law.

Neither was the Evans Statement issued as an "executive order," which might arguably have required formal rescission by Governor Ray before she could disregard it.

Thus, under Washington State law, it appears that energy facility siting decisions of the kind dealt with in the Evans Statement need not be made in accordance with that Statement if the Governor, the final decision maker, chooses to disregard it.

Even if Governor Ray for some reason chose to adhere to the Evans Statement, its independent significance for purposes of the statutory energy facility siting procedure would not be great. As was noted above, judicial review of each siting decision will proceed on the basis of the evidence contained in the record and any public policy contained in an applicable act of the legislature, and other applicable statutes and regulations (RCW §34.04.130(5)) Among these regulations would be any that EFSEC might adopt under RCW §80.50.040. Executive policies having no clear basis in statute or regulation can probably be relied upon by EFSEC or by the Governor if, but only if, they are supported by factual evidence in the record. The mere citation of such executive policies, including the Evans Statement, in the absence of independent factual support in the record, will be an insufficient basis for decision by the Governor, and should result in the reversal of her decision upon judicial review. Governor Ray could cite the Evans Statement in making a siting decision. She could in the same manner, cite the statement of any interested private citizen. She would also have to cite, however, factual evidence in the record demonstrating the soundness of the policy expressed in the cited statement if her decision were to be viable before the courts. It would be this evidence, rather than the fact that the statement was adopted by a former Governor, or that it was part of the WCZMP, that the court would consider in making its decision.

The last sentence of the Evans Statement is as follows:

> "Unless specific plans and firm commitments to connect to the Port Angeles facility are included, individual expansions to existing offloading facilities or proposals to deepen channels to accommodate deeper draft vessels are considered inconsistent with the single terminal concept as incorporated in the State coastal zone mangaement program."

Expansions of existing offloading facilities east of Port Angeles that resulted in added capacity of less than 50,000 barrels per day would not be subject to the EFSEC procedure, and the preceding analysis would not directly apply to them. It could be argued, therefore, that the sentence just quoted was an exercise by Governor Evans of his constitutional authority to supervise subordinate executive agencies by which he directed the agencies considering permits for such expansion not to grant them. The proposition that the Governor could by fiat override and supplement in a binding way the legislative and regulatory criteria governing these permit procedures is itself a questionable one. Close analysis of the quoted sentence reveals, however,

that it does not command State agencies to deny permits for offloading facility expansions east of Port Angeles. The sentence notes that such expansion would be "considered inconsistent with the single terminal concept" as incorporated in the WCZMP. The "single terminal concept" can, as was discussed above, be effectuated only by EFSEC, upon which that concept is not binding for the reasons set forth in the preceding discussion. The observation by the former Governor that expansions east of Port Angeles would be inconsistent with an advisory policy cannot reasonably be interpreted as a command by him that State agencies block such expansion. It thus does not appear to constitute the kind of executive directive or order that even arguably might have legally binding effect. For certain State and local decisionmakers, the Evans Statement may have persuasive force, but this does not necessarily depend upon its inclusion in or exclusion from the WCZMP.

On the basis of the preceding discussion, it can be concluded that the Evans Statement has no legal effect for purposes of Washington State law.

C. THE EFFECT OF THE EVANS STATEMENT UNDER THE FEDERAL CZMA

Many persons interested in the question appear to hold the view that, even if the Evans Statement has no binding force under Washington law, it derives legal effect from the Federal Coastal Zone Management Act of 1972, Pub.L. 92-583, 86 Stat. 1280, as amended by Pub.L. 94-370, 90 Stat. 1013.

This view seems to derive from two sources:

(1) The belief that any policy contained in a coastal zone management program is absolutely binding on Federal agencies under the consistency provisions of §307 of the Act, whether or not that policy binds State decisionmakers;

(2) The opinion that the failure of a State to comply with any policy expressed in its coastal zone management program is a ground for termination and withdrawal of Federal funding under §312(b) of the Act.

Both of these opinions are, in the view of OCZM, incorrect, and are inconsistent with current OCZM regulations. The confusion they reflect is, however, understandable in light of the special circumstances surrounding the approval of the WCZMP. OCZM acknowledges its responsibility for at least a portion of this confusion by not requiring that the enforceable and hortatory policies of the WCZMP be distinguished. Based on its experience since the approval of the WCZMP, OCZM has revised its regulations to require such a distinction, as discussed in the following paragraphs. It is the belief of OCZM that, had the Washington program undergone review and approval pursuant to current Federal regulations, 15CFR923, it would have been clear that the EFSEC procedures were the source of the enforceable siting policies in the State, and that the Evans statement was of no legal effect on those policies.

One of the basic requirements for OCZM approval of a State program is that it contain a sufficient range of policies that are binding as a matter

of law on all relevant decision makers. These policies are generally contained in statutes, rules, interagency memoranda of agreement, and executive orders directed to subordinate officials. The necessity of such enforceable policies was widely recognized at the time the WCZMP was approved in June 1976.

OCZM regulations in effect at that time had not yet, however, made it clear that a program might also contain nonenforceable "enhancement" or hortatory policies, provided that its enforceable policies were sufficient to meet Federal requirements. This is now plainly stated in 15 CFR §923.3(h), effective April 1, 1978. In the absence of such a provision at the time the WCZMP was approved, however, some persons appear to have considered the inclusion of the Evans Statement in the WCZMP to reflect the belief and expectation of OCZM that the Statement would be treated as binding in State energy facility siting decisions. The potential confusion was exacerbated by the fact that the WCZMP was the first program approved by OCZM, meaning that there was no precedent that could be relied upon in distinguishing degrees of policy enforceability.

As was concluded above, the Evans Statement is not binding upon the State officials responsible for the type of decisions with which it deals. It was not considered necessary by OCZM for approval of the WCZMP, as evidenced by its absence from the Assistant Administrator's "Findings" on the approvability of the WCZMP. It is therefore, under current OCZM regulations, a hortatory policy of the Washington Program. The enforceable provisions of the WCZMP on major energy facility siting are those contained and referred to in RCW Chapter 80.50 and in any guidelines and regulations adopted pursuant to that statute. It is on the basis of the latter provisions, rather than of the Evans Statement, that any assessment of the approvability of the WCZMP proceeded.

It may be helpful to recall that the WCZMP was approved prior to the passage of the 1976 amendments to the Federal CZMA (Pub. L. 94-370) which, among other things, required more detailed attention to the manner in which a state addresses coastal energy facility siting. It is fair to say that a coastal program that contained a policy of such unclear status as the Evans Statement, would not be acceptable under present regulations, unless the policy was specifically identified as hortatory, and unless sufficiently detailed, enforceable policies based in state law were also delineated.

It is because the Evans Statement is a hortatory policy that the two contentions set forth above, as basis for the view that it is enforceable under Federal law, are incorrect.

Hortatory policies like the Evans Statement are not binding on Federal agencies under the Federal consistency provisions contained in §307 of the Coastal Zone Management Act. 15 CFR §930.39(c), effective April 15, 1978, provides, in part:

> "In making their consistency determinations, Federal agencies shall give appropriate weight to the various types of provisions within the management program. Federal agencies must ensure that their activities

> are consistent to the maximum extent practicable with the enforceable, mandatory policies of the management program. However, Federal agencies need only give adequate consideration to management program provisions which are in the nature of recommendations."

The comment to this provision states:

> "The consistency obligations imposed by the Act are only as extensive as the provisions of the management program. Therefore, to the extent a Federal activity relates to coastal issues which are addressed by the management program only in the form of recommended policies, Federal agencies need only give adequate consideration to such recommendations."

Thus, the Evans Statement, which is a hortatory policy, i.e., a "recommendation," need only be given "adequate consideration" by Federal agencies involved in major energy facility siting in Washington State. The comment toi 15 CFR !930.39(c) notes that the consistency obligations imposed upon Federal agencies by the CZMA are only as extensive as the provisions of the applicable management program. Thus, the "adequate consideration" that Federal agencies are obligated to give to a management program policy is only that level of consideration that responsible State agencies are bound to give that policy. Because the agencies responsible for energy facility siting in Washington are not legally obligated to give any consideration to the Evans Statement as such, there is no requirement that Federal agencies accord it any consideration in carrying out their responsibilities. The Evans Statement alone, therefore, would not prohibit such agencies as the U. S. Army Corps of Engineers and the Environmental Protection Agency from issuing permits for the construction of a major petroleum receiving and transfer facility east of Port Angeles. Similarly, if the State agencies responsible for energy facility siting were legally required to consider, though not be bound by the Evans Statement in making their decisions, the same level of review would apply to the decision-making by the Federal agencies.

Neither, under these particular circumstances, would the failure of Governor Ray to comply with the Evans Statement be a sufficient ground for termination and withdrawal of funding from the WCZMP by OCZM under §312(b) of the Coastal Zone Management Act. The very basis for the distinction between "enforceable" and "hortatory" policies is the recognition that the latter will not necessarily be complied with by responsible decisionmakers, and that OCZM does not rely on them to determine the ultimate approvability of a State coastal management program. It would be arbitrary and capricious for OCZM to terminate the WCZMP for noncompliance with this particular hortatory policy, which was not essential for program approval.

Thus, the Evans Statement derives no binding force from the Federal Coastal Zone Management Act of 1972. The preceding discussion is not intended to imply that the inclusion of hortatory policies in an approved

program never has an effect on the environment. On the contrary, such policies can be useful in State programs, both in guiding the use of Federal funds in program implementation and in suggesting directions for future development of additional enforceable policies.

D. CONCLUSION: DELETION OF THE EVANS STATEMENT FROM THE WCZMP WOULD HAVE NO SIGNIFICANT IMPACT ON THE QUALITY OF THE HUMAN ENVIRONMENT.

Because the Evans Statement lacks binding force under either State law or the Federal Coastal Zone Management Act, it does not restrict the range of options available to State and Federal decision makers in the siting and expansion of energy facilities in Washington State. Specifically, it does not compel these officials to site a single major petroleum receiving and transfer facility only at Port Angeles or points west thereof; neither does it prevent the siting or expansion of one or more such facilities on Puget Sound. The deletion of the Evans Statement from the WCZMP would thus have no significant impact on the quality of the human environment.

It should be noted that the policy embodied in the Evans Statement - that of preventing the expansion or construction of new petroleum transfer and receiving facilities within the Puget Sound system - has to a great extent been made binding on all Federal agencies by a recent amendment to the Marine Mammal Protection Act. This amendment, sponsored by Senator Warren G. Magnuson of Washington, and enacted as part of Pub.L. 95-136 on October 17, 1977, provides:

> "Notwithstanding any other provision of law, on and after the date of enactment of this section, no officer, employee, or other official of the Federal Government shall, or shall have authority to issue, renew, grant or otherwise approve any permit, license, or other authority for constructing, renovating, modifying or otherwise altering a terminal, dock, or other facility in, on, or immediately adjacent to, or affecting the navigable waters of Puget Sound, or any other navigable waters in the State of
>
> Washington east of Port Angeles, which will or may result in any increase in the volume of crude oil capable of being handled at any such facility (measured as of the date of enactment of this section), other than oil to be refined for consumption in the State of Washington."

Thus, whether removed from the WCZMP or not, the nonbinding Evans Statement has already been superseded for most purposes by this binding provision of the Marine Mammal Protection Act. This only confirms that deletion of the Evans Statement from the Washington Program will have no significant impact on the quality of the human environment.

PART FIVE:

THE RELATIONSHIP OF THE PROPOSED ACTION TO LAND USE PLANS, POLICIES AND CONTROLS OF THE AREA

Part V. The Relationship of the Proposed Action To Land Use Plans, Policies and Controls of the Area

Since it has been determined that the Evans Policy Statement does not have the force and effect of law, and neither binds State agencies in their decision-making processes nor requires applicants for Federal permits to certify that their actions are consistent with its provisions, the statement has little practical relationship to existing land use plans, policies or controls in the areas that would be impacted by oil transshipment routes and facilities in Puget Sound. There are however, several policies, land use plans and control measures which should be discussed in connection with the Evans Statement.

A. Magnuson Amendment to the Marine Mammal Protection Act of 1972

The purpose of this amendment was to endorse and affirm in Federal law the Evans Policy Statement. Senator Magnuson stated that the amendment is a "clear Federal endorsement of the policy now in the Washington State coastal zone management program that —

> The State of Washington as a matter of overiding policy, positively supports the concept of a single, major crude petroleum receiving and transfer facility at or west of Port Angeles." (CONGRESSIONAL RECORD - SENATE, October 4, 1977, S16228)

The amendment language actually stops short of endorsing a single, major crude petroleum receiving and transfer facility at or west of Port Angeles, and only limits the construction or modification of facilities east of Port Angeles. Senator Magnuson went on to say: "I do not necessarily favor increased oil traffic at Port Angeles. The State of Washington already bears its fair share of the Nation's refinery capacity. The social costs of oil tanker movements in my State, in my view, simply outweigh the benefits. And as I said, there are other alternatives...This amendment will speed a decision on the best oil transport system to the Midwest." (Op. cit., S16228)

Because the Evans Statement is only hortatory, its deletion from the Washington CZM Program will not facilitate the siting or expansion of energy facilities east of Port Angeles in violation of the Magnuson amendment.

B. The Washington Energy Facility Site Evaluation Council (EFSEC) (Chapter 80.50 RCW)

The deletion of the Evans Policy Statement would be consistent with the EFSEC process which provides for an orderly review of the complex technical issues surrounding the siting of energy facilities through contested case hearings. The analysis in Part IV of this EIS explains the limited impact

of the Evans Statement on the evidentiary proceedings of the EFSEC siting process.

C. Clallam County Comprehensive Land Use Plan

The Clallam County Comprehensive Land Use Plan bans all aspects of any oil transfer facility. Because the Evans Statement is merely hortatory, its deletion will not necessarily lessen the possibility that the Land Use Plan will be overridden through the state energy facility siting procedure. In the current case of the Northern Tier Pipeline proposal, EFSEC determined that the tank farm facility was inconsistent with the County zoning ordinance, but that the terminal facility was consistent with the zoning ordinance of the City of Port Angeles.

PART SIX:

ALTERNATIVES TO THE PROPOSED ACTION

VI. ALTERNATIVES TO THE PROPOSED ACTION

The following alternatives to approve, delay, or deny approval of the amendment request are subject to review.

A. Approve the proposal to delete the Evans Policy Statement for reasons other than its lack of enforceability, that is:

1. because there are currently adequate assurances of protection of the Puget Sound environment; or,

2. in order to resolve concerns that the Evans Policy Statement was not properly incorporated into the Washington CZM Program.

Approve Since There Are Currently Adequate Assurances of Protection of the Puget Sound Environment

Because it is hortatory, deletion of the Evans Statement will not increase the likelihood of oil spill damage to the Puget Sound environment.

Since the Governor of the State of Washington requested that the Evans Statement be deleted from the Washington CZM Program, a number of events have transpired which actually help to assure that the Puget Sound environment is adequately considered and protected in any future deliberations on a transshipment site in the Puget Sound area.

The first and most significant of these events was the enactment on October 17, 1977, of the Magnuson Amendment to the Marine Mammal Protection Act (P.L. 95-136), described in Part IV of this DEIS. Its purpose was to implement the policy of the Evans Statement by restricting tanker traffic in Puget Sound through limitation of offloading facilities. It also established that "the navigable waters of Puget Sound in the State of Washington, and the natural resources therein, are a fragile and important national asset." (Section 5.(a)(1)) The amendment prohibits Federal agencies from issuing, renewing, or granting permits for the construction, renovatoin, modification, or alteration of any terminal, dock, or oil storage and processing facility on or adjacent to the navigable waters of Puget Sound east of Port Angeles. It had immediate impact on the processing of the Corps Section 10 permit application for the expansion of the ARCO Cherry Point Terminal.

The 1975 Washington Tanker Law (Chapter 125, Laws of Washington, 1975, First Extraordinary Session, Wash. Rev. Code 88.16.170 et seq.) was adopted to regulate certain aspects of the design, size, and movement of tank vessels carrying oil in Puget Sound.

The United States Supreme Court on March 6, 1978, in Ray v. Atlantic Richfield Co. (No. 76-930) declared several provisions of the State of Washington Tanker Law unconstitutional based on Federal preemption of State law.

On March 14, 1978, Secretary of Transportation Brock Adams issued the Puget Sound Interim Navigation Rule (see Attachment D) which prohibited any oil tanker in excess of 125,000 deadwight tons from entering the waters of Puget Sound. This rule was to be in effect until September 9, 1978, but was extended until June 30, 1979. In addition, the U.S. Coast Guard issued an advance notice of proposed rulemaking on March 22, 1978, on its consideration of regulations governing the operation of tank vessels in the Puget Sound area (see Attachment E).

The Coast Guard is currently considering the following regulatory approaches:

1. Specifying times of entry into, movement within, or departure from the designated waters.

2. Limiting the size of tank vessels utilizing one or more of the following criteria:

(a) Gross tonnage.
(b) Deadweight tonnage.
(c) Length of vessels.
(d) Breadth of vessels.
(e) Tank size.
(f) Keel clearance.

3. Limiting the speed of tank vessels.

4. Issuing regulations based on the particular operation characteristics, or equipment of the vessel including the number and type of propellers, and the main and emergency propulsion, steering and navigational capabilities of the vessel.

5. Issuing regulations which restrict tank vessel operation during hazardous weather conditions or in hazardous areas.

6. Issuing requirements for tug assistance or tug escort for tank vessels.

7. Issuing regulations governing pilotage requirements.

8. Appraising possible vessel controls or requirements based upon specific routes to be taken by vessels having particular destinations.

Therefore, under Section 102 of the Ports and Waterways Safety Act of 1972, the Coast Guard is exercising its constitutional authority to regulate tanker traffic taking into account numerous factors including hazards and environmental considerations.

In addition to the Federal provisions which are in effect or will shortly be in effect, the State EFSEC procedures, which have been previously described in this EIS, are intended to recognize the need for energy facilities and provide adequate safeguards to the environment.

Approve the Amendment To Resolve Concerns That the Evans Policy Statement Was Not Properly Incorporated Into the Washington CZM Program.

In the course of the controversy about the Evans Statement, there have been Claims that the Evans Policy Statement was incorporated into the Washington CZM Program without the benefit of proper public hearings according to either Federal regulations or State laws, and that the environmental impacts associated with the Statement were not adequately discussed. This uncertainty was considered by some parties to be sufficient grounds upon which to base a request for legal review of various aspects of a facility siting dispute.

Following approval of the Program, the Atlantic Richfield Company (ARCO) applied for a Rivers and Harbors Act Section 10 permit from the Army Corps of Engineers to expand its petroleum and pipeline facilities at Cherry Point, an area east of Port Angeles on Puget Sound. Thereafter, a group called the Coalition Against Oil Pollution filed suit in State court to require the Washington State Department of Ecology to exercise its Section 307 CZMA responsibilities by objecting to the ARCO permit application on the basis of its inconsistency with the Evans Policy Statement. As a result of this action, ARCO and Clallam County intervened in the lawsuit and challenged the legality of the incorporation of the Evans Policy. Two related lawsuits against the Department of Commerce, Office of Coastal Zone Management and the U.S. Army Corps of Engineers were subsequently initiated in Federal court raising the same issues.

The Coalition Against Oil Pollution suit filed in State court is moot since the Magnuson Amendment prohibited further expansion of the Cherry Point facility. The status of the legal challenges in Federal court by Clallam County and ARCO depends on the outcome of this amendment process.

This alternative allows the Assistant Administrator for Coastal Zone Management to review the facts of the incorporation of the policy in order to determine if, notwithstanding the merit of the Statement or its proposed deletion, it is in the best interest of the public and the State of Washington to dispel this cloud of uncertainty.

B. Delay Approval of the Proposal to Delete the Evans Policy Statement:

1. until after the energy facility planning element, pursuant to Section 305(b)(8) of the CZMA, has been approved as part of the management program; or

2. until misinterpretation of the State "policy statement" on page 17 of the program, regarding transhipment sites, is resolved.

Delay Approval Until After the Energy Facility Planning Element Pursuant to Section 305(b)(8) of the CZMA Has Been Approved As Part of the Management Program

This alternative derives from the assertion that the Evans policy is a necessary component of the energy facility planning process that must be incorporated into the Washington Coastal Zone Management Program under CZMA §305(b)(8). Given this view, it would be inappropriate to consider deletion of the Evans policy from the Washington CZM Program until OCZM has completed its evaluation of the proposed energy facility planning element.

The provisions of Section 305(b)(8) of the CZMA were added when the Act was amended in 1976. The Section and the accompanying regulations, require States with approved coastal programs to submit to OCZM an "energy facility planning element," which describes in detail how the State manages its coastal energy facilities. These materials have been submitted to OCZM, and are undergoing review as of this writing.

The WCZMP draft "energy element" describes the existing State mechanisms for review of major energy facilities, namely EFSEC. Approval of the energy facility planning element of the WCZMP by OCZM will simply provide a formal sanction for the existing EFSEC process as the procedure that has been utilized by the State for several years to evaluate alternative energy facility siting decisions, including those in the coastal zone. The legal analysis included in Part Four of this EIS shows, however, that the Evans Policy Statement has no force of law and, therefore, cannot bind decision-makers. Although the Evans policy has been available for inclusion in any administrative record developed by EFSEC during a site evaluation, it has not been used, and cannot legally be used, to mandate a particular outcome. Even if the Evans Statement were retained, therefore, it would not be a significant component of an energy facility planning element. The energy facility planning element merely clarifies the relationship of the EFSEC process to the Washington CZM Program; it does not propose the initiation of new procedures. OCZM, therefore, anticipates that the energy element will be amended into the WCZMP, and that a "negative declaration" will be the appropriate treatment under the National Environmental Policy Act (NEPA), since no new policies or procedures will be used. Because of the abbreviated NEPA procedures for an action accompanied by a negative declaration, and because OCZM expects that its formal proposal to amend the WCAMP to include the "energy

element" will occur in December 1978, as a practical matter, the process for incorporation of the energy facility element is likely to overtake the present amendment action.

In conclusion, there would be no benefit in delaying approval of the deletion of the Evans policy pending approval of the energy facility planning element by OCZM, because the Evans statement is unenforceable and cannot be expected to play an integral role in the planning process.

Delay Approval Until the Misinterpretation of the "Policy Statement" On Page 17 of the Program Regarding Any Transshipment Sites Is Resolved.

On page 17 of the Washington CZM Program, in a section describing areas of particular concern for purposes of coastal zone management, a statement appears which includes the following:

"Prevailing state policy at this time indicates that the state is not interested in becoming a major petroleum processing center or transportation terminus for a major new pipeline to the midewest..."

Several individuals either raised this issue specifically or generically during the public hearings of October 4, 5, and 6, 1977. It appears that the attitude of many in the State is that they prefer that Puget Sound not be used as a transshipment site for oil going to the U.S. interior States. If for some reason, this policy were enforceable or were used to influence facilities, the OCZM would have to review the Washington CZM Program to determine whether or not it meets the requirement of Section 306(c)(8), of the CZMA. This section requires that "[t]he management program provides for adequate consideration of the national interest involved in the siting of facilities necessary to meet requirements which are other than local in nature." By deleting the Evans Policy Statement, which supports "A single major crude petroleum receiving and transfer facility at or west of Port Angeles", serving a possible national interest to meet the petroleum needs of the Northern Tier States in the future, the State would be on record in its Management Program as not supporting any future transfer site.

In an effort to clarify the particular meaning and impact of this policy statement, OCZM has requested the Department of Ecology to explain whether or not this policy was enforceable as an elaboration of State law. The correspondence between OCZM and DOE is contained in Attachment F and should be reviewed at this time.

OCZM concludes, with DOE, that the Statement was descriptive and not an elaboration of State policy, and was never intended to be enforced through the Section 307 provisions of the CZMA. Given the fact that the Evans Policy Statement is unenforceable, and that the page 17 policy is merely descriptive and also that the State has existing facility siting procedures which take into consideration the national interest, there is no deficiency in the State's Program concerning either energy facility siting or national interest consideration. The attitudes of the State's decision-makers with respect to energy facility siting appear to support

the view that Washington remains conscious of its responsibilities to the Nation. The public hearing transcript record and other articles and documents suggest that these decision-makers would support a transshipment facility if it were "deemed in the national interest."

C. Deny Approval of the Proposal to Delete the Evans Policy Statement Because Deletion Might Adversely Impact the National Interest in Puget Sound as Expressed by the Magnuson Amendment to the Marine Mammal Protection Act (Pub. L. 95-136)

The Magnuson Amendment to the Marine Mammal Protection Act of 1972 declared that "the navigable waters of Puget Sound in the State of Washington, and the natural resources therein, are a fragile and important national asset" (Section 5(a)(1)). It goes on to say that "Puget Sound and the shore area immediately adjacent thereto is threatened by increased domestic and international traffic of tankers carrying crude oil in bulk which increases the possibility of several collisions and oil spills; and it is necessary to restrict such tanker traffic in Puget Sound in order to protect the navigable waters thereof, the natural resources therein, and the shore area immediately adjacent thereto, from environmental harms" (Section 5 (a)(2) and (3)).

There are many different types of national interests which are expressed by law or Executive policy including those related to energy needs of the Nation, and the protection of wetlands. The Magnuson Amendment is a clear expression of the national interest of a specific geographic resource, namely, Puget Sound. If the deletion of the Evans Statement were in any way shown to jeopardize this expressed national interest in Puget Sound, OCZM would very probably deny the request for that deletion. Since the statement has been shown to afford Puget Sound no protection that is not already available through other enforceable mechanisms, the policy's deletion cannot adversely affect the resources.

Based on numerous studies and articles listed in Appendix 3, testimony received during the public hearings held on October 4,5, and 6, 1977, by the Ecological Commission for the Department of Ecology on this proposed amendment, and the environmental impact assessment submitted by the Department of Ecology, it is clear the potential environmental impacts on the Puget Sound environment associated with increased tanker traffic to points east of Port Angeles are greater than if tanker traffic were contained at or west of Port Angeles. With respect to the terrestrial environment and the impacts associated with a new terminal facility and pipeline across or around Puget Sound, this does not necessarily hold true.

The decision which must be made, however, is whether or not the deletion of the Evans Policy Statement itself from the Management Program will adversely impact the Puget Sound environment. The conclusion of Part IV of this EIS is that it would not, and therefore, deletion of the policy would not be contrary to the national interest.

One major potential impact that would have to be considered if OCZM were to deny the amendment request, however, would be the possible withdrawal of Washington from the voluntary Federal CZM Program. The loss of the protection provided to Puget Sound by the Federally-assisted management effort of the State through the WCZMP could be a significant impact associated with denial of the requested amendment. Such impacts might be interpreted as contrary to the expressed national interest in the protection of the Sound's resources.

The Magnuson Amendment, while reaffirming the Evans Statement, to some extent supersedes it. During the passage of the Amendment, Senator Magnuson stated the following:

> "The State of Washington has been experiencing a heated public debate on the location of expanded oil terminal facilities in the State's coastal zone. While I would have preferred a unanimous decision by State leaders settling this controversy, unfortunately this has not happened. Instead of allowing this controversy to continue, I and my colleagues from the State have decided to confirm, as a matter of Federal law, that increased tanker traffic in Puget Sound is simply bad policy and should not be allowed." (CONGRESSIONAL RECORD - SENATE, October 4, 1977, S16228)

D. No Action: The State Could Withdraw the Amendment Request

Part IV of this DEIS concludes that since the Evans Policy Statement is unenforceable under both State and Federal law, there are no adverse environmental impacts associated with its deletion from the approved Washington CZM Program. Given the fact that the statement is hortatory in nature, and given the limitations imposed through the enactment of the Magnuson Amendment to the Marine Mammal Protection Act, the Governor could withdraw the request that the Evans Statement be deleted in the knowledge that retention of the policy would have no substantive effect on decision making.

While there would be no adverse environmental impacts or consequences associated with this alternative, this alternative would tend to prolong the uncertainty as to what the substantive, enforceable policies of the State are with respect to land and energy facility siting decisions in the coastal zone.

PART SEVEN:

PROBABLE ADVERSE ENVIRONMENTAL EFFECTS
WHICH CANNOT BE AVOIDED

VII. Probable Adverse Environmental Effects Which Cannot Be Avoided

There are no known or real adverse environmental effects associated with this proposed Federal action. While many people have believed the Evans Policy Statement to be an enforceable State policy designed to protect the marine environment of Puget Sound, and it might well have been under Governor Evans, if for no other reason than it's impact on Executive Agencies through the Governor's moral suasion, it has now been determined to no longer have that same effect.

If the policy was enforceable and the Magnuson Amendment was not prohibiting the further expansion of the Cherry Point facility, this section would have had to address the potential adverse environmental effects associated with the potential of oil spills in Puget Sound due to increased oil tanker traffic. The Evans Statement has no such legal force, and therefore, has no effect on the likelihood of an oil spill on Puget Sound.

PART EIGHT:

THE RELATIONSHIP BETWEEN LOCAL SHORT-TERM USES OF MAN'S ENVIRONMENT AND THE MAINTENANCE AND ENHANCEMENT OF LONG-TERM PRODUCTIVITY

VIII. The Relationship Between Local Short-Term Uses of Man's Environment and the Maintenance and Enhancement of Long-Term Productivity.

The Evans Policy Statement was designed to maintain the long-term productivity of the Puget Sound marine environment by reducing the risk factor of a major oil spill by reducing 1) the number of transfer sites, 2) the amount of vessel traffic in constricted channels, and 3) the amount of environmentally sensitive marine waters to be exposed to the risk.

PART NINE:

IRREVERSIBLE AND IRRETRIEVABLE COMMITMENTS OF RESOURCES THAT WOULD BE INVOLVED IN THE PROPOSED ACTION SHOULD IT BE IMPLEMENTED

IX. Irreversible and Irretrievable Commitments of Resources That Would Be Involved in this Proposed Action Should It Be Implemented

There are no known resources that would be irreversibly or irretrievably committed as a result of deleting the Evans Policy Statement from the Washington CZM Program. The action itself will not trigger a construction project or be responsible for increasing the tanker traffic in Puget Sound since the Evans Policy Statement is unenforceable and any expansion or construction of an oil terminal facility east of Port Angeles for needs other than those of the State of Washington is prohibited by Federal law.

PART TEN:

CONSULTATION AND COORDINATION

X. Consultation and Coordination

This section presents an account of the consultation and coordination process involved in the preparation of this DEIS. Since the Governor of the State of Washington first requested the deletion of the Evans Policy Statement, members of OCZM have consulted the following individuals and agency representatives.

Staff members of the National Oceanic and Atmospheric Administration, Office of General Counsel, provided the legal assessment. Washington State Department of Ecology, Office of Lands Programs provided OCZM with an environmental analysis of the proposed amendment in September, 1977 and a complete transcript of the public hearings on the issue which were held by the Ecological Commission on October 4, 5, and 6, 1977.

A number of discussions were held with various staff members of the U.S. Congress and the Washington State Legislature, including the staffs of Senator Warren G. Magnuson; Mr. Douglas Anderson, Staff Counsel for the U.S. Senate Committee on Commerce, Science and Transportation; and, Mr. Curtis Eschels, Senior Research Analyst for the Washington State Senate Energy and Utilities Committee. These individuals provided additional information on the State's environmental analysis.

Messrs. Warren Baxter, Steve Dice and John Welsh of the U.S. Army Corps of Engineers District - Seattle, provided OCZM with a substantial amount of environmental information on Puget Sound and the oil transportation and pipeline proposals.

LTC McDonald of the U.S Coast Guard provided information on the status of the Coast Guard regulations governing tank vessels in Puget Sound.

ATTACHMENTS

ATTACHMENT A:

FEDERAL AGENCY COMMENTS ON THE DRAFT
WASHINGTON COASTAL ZONE MANAGEMENT
PROGRAM REGARDING ENERGY FACILITY SITING

Attachment A

Federal Agency Comments on the Draft
Washington Coastal Zone Management Program

In February 1975, OCZM received a revised draft of the Washington CZM Program for review.

On March 21, 1975, OCZM made available to the public, CEQ and Federal agencies a draft environmental impact statement on the draft WCZMP. This program and the DEIS did not address the tanker terminal issue.

On April 22, 1975, OCZM and the State of Washington held joint public hearings on the draft management program and DEIS. Neither the tanker issue or oil transportation was raised as a concern in this public hearing.

The Federal agency review of draft program and EIS (comment period closed May 10, 1975) resulted in the following comments from Federal agencies, relevant to the Port Angeles policy"

1) FEA-Frank Zarb (May 20, 1975)

> "...certain energy facilities are particularly dependent upon the utilization of or access to coastal waters."
>
> "We urge more detailed treatment of the substantive matters included in the enclosed statement."
>
> "Section 923.4—Problems, Goals, Policies and Objectives
>
> The Washington Program provides no explicit and detailed statement of policy concerning the siting of energy facilities in the coastal zone. There are occasional references to "power generation," "deep draft port facilities," "petrochemical facilities," and "oil and gas drilling." These references indicate that the procedures pertaining to the energy facility siting question. A more detailed treatment is needed, however, covering the full range of types of regulations. Given the environmental concern frequently

associated with the development of energy facilities and the importance of adequate energy facility capacity, the enunciation of a detailed policy on this subject should be a major objective of the program."

Section 923.13—Areas of Particular Concern

"Pertinent regulations (CFR 923.13) strongly suggest (if not require) that areas in the coastal zone especially suited for development be designated as "areas of particular concern."

"As noted earlier, FEA believes that the program should identify areas which are especially suitable for energy development, and designate them as "areas of particular concern."

Section 923.14—Guidelines on Priority of Uses

"...with respect to other categories of energy facilities (than thermal power plants), the Washington Program is virtually silent. This is a significant deficiency."

Section 923.15—National Interest in the Siting of Facilities

"FEA's principal reservation concerning Washington's proposed program is that it does not sufficiently evidence consideration of the National interest in energy facility siting in planning for uses of the coastal zone. The program is already in place at the State level based on the Shoreline Management Act, which was primarily designed to protect State and local interests. One of the requirements of the Coastal Zone Management Act is to insure that State and local government adequately consider National and regional interests in management of the coastal zone."

2) Federal Power Commission (Richard Hill - May 12, 1975)

"The Program must detail the impact of energy supplies and shipments on its Coastal Zone, and describe how the Coastal Zone Plan will provide for State, regional, and National needs. The Program must explain how ports, LNG storage facilities, refineries are presently treated, and how the Plan will ensure that the needed facilities can be accommodated."

3) Energy Research and Development Administration
(James Liverman - May 30, 1975)

"It is not clear wiehter Federal approval and State implementation of either or both of the proposed CZM programs will have substantial implications for ERDA in the siting of energy related research and development, and demonstration facilities.

"We would recommend withholding Federal approval of the Washington CZM program pending a determination by ERDA, and other concerned Federal agencies that acceptable procedures and administration mechanisms have been established to ensure adequate consideration of the national interests in siting energy related facilities."

After a delay in program approval in order to substantially revise the management program in response to these and other comments, Washington DOE formally resubmitted its revised management program, December 12, 1975. This final program recognized the incidents of pollution related to oil spills, designated Port Angeles as a possible oil transfer site, discussed the potential impacts of Alaska North Slope Oil on Puget Sound and the Strait of Juan de Fuca, cited the Oceanographic Commission's feasibility study of offshore mono-buoy and related transfer facilities, which resulted in a report to the legislature entitled "Offshore Petroleum Transfer System for Washington State," and discussed the State's tanker law restricting tankers entering Puget Sound.

This revised management program specifically cited the significant impacts of petroleum transfer and processing at Cherry Point in Whatcom County. It cited the Oceanographic Commission's preferred alternative contemplating unloading tankers at or west of Port Angeles and piping crude petroleum to Puget Sound Refineries.

This revised management program was circulated for Federal agency review on December 18, 1975.

Meanwhile, at its public meeting on December 22, 1975, the Washington Oceanographic Commission adopted a resolution urging the Governor and the State Legislature to enact a four point State oil transportation policy, including:

1) "The only construction eligible for permits through January 1986 should be part of a new single common use

crude oil terminal which could be built only at a site in the Port Angeles region,

2) "To encourage construction of such a terminal, economic incentives should be granted (subsidy by Federal/State tax exemptions, reduced utility rate or some combination),

3) "A State authority should establish State safety regulations for all pipelines and set rates for intrastate transportation,

4) "State authority should establish a set of environmental review criteria for such a terminal and pipeline system."

On February 15, 1976, the extended Federal agency review of the final management program ended. The following additional comments were received by Federal agencies from this review:

Maritime Administration (January 1976):

"The Washington Coastal Zone Management Program is at the present time the primary vehicle in the State for assuring that the State's interest is considered in oil exploration, transportation and facility siting. We find this to be equitable and realistic, with particular reference to States which are involved in the movement of petroleum, such as the State of Washington. Some consideration should be given to the development of port reception facilities for the collection, treatment and disposal of oily wastes from vessles."

Energy Research and Development Administration
(J. Swinebroad, March 3, 1976):

"The one difficulty I find with the program is that I believe insufficient attention is given to the problems of coastal zone program and with the development of energy facilities. I believe the program should have some detailed statements of policy relating to the siting of energy facilities. It would be helpful if the program could identify areas especially useful for the siting of such facilities. Perhaps these areas could be designated as areas of particular concern."

Federal Energy Administration
(W. Rosenburg, February 20, 1976):

"We find that the State has not responded to our original comment that the program provides no explicit and detailed statement of

policy concerning the siting of energy facilities in the coastal zone. The WCZMP indicates in several places that energy development is one of the State's highest priorities. However, since the State has no present articulated policy on energy development and no general land use category clearly related to energy development, it is more difficult to effectively evaluate or interpret the program."

On March 29, 1976, Governor Evans submitted several modifications of the WCZMP to Dr. Robert M. White, Administrator with the statement:

"I believe that the attached material will resolve the questions and concerns raised by the various reviews of the program document, and that you should be in a position to approve the Washington State's Program with no further difficulty."

The following additions were included in this gubernatorial submission, in response to the concerns about the treatment of energy facilities by the WCZMP and DEIS. These additions included the Evans Policy Statement that is the subject of this DEIS, and were based on recommendations from the Oceanographic Commission and the Energy Policy Council, which involved public hearings. The principal other relevant additions were two new "program enhancement objectives" addressing energy facility siting and review. The new objectives state:

1. "The State Legsilature has recently expanded the scope of the Thermal Power Plant Site Evaulation Coujcil to embrace the siting of all types of energy facilities, and this new energy act also addresses other energy problems and issues. Insofar as energy facilities and other concerns may affect the coastal resource, the Department will work with the State's new energy program and the Federal energy agencies to ensure compatible State/Federal energy efforts as they affect the coastal zone, especially insofar as facilities siting is concerned."

2. "Washington State will soon be faced with greater amounts of incoming crude oil shipped by tanker. The possibility of a single oil tanker receiving terminal located in the Port Angeles vicinity has become a serious proposal. The Department will devote special effort to assist via CZM, the feasibility determination of this proposal. If the proposal is found feasible, the Department will work toward the best siting, design and management of this terminal using the CZM program as the focal point of this effort."

ATTACHMENT B:

THE WASHINGTON COASTAL ZONE MANAGEMENT POLICY
ON AN OIL TERMINAL AT OR WEST OF PORT ANGELES

Attachment B

A Policy Statement by Governor Daniel J. Evans on the Siting of an Oil Terminal at or West of Port Angeles*

The State of Washington, as a matter of overriding policy, positively supports the concept of a single, major crude petroleum receiving and transfer facility at or west of Port Angeles. This policy shall be the fundamental, underlying principle for state actions on the North Puget Sound and Straits oil transportation issue and is specifically incorporated within the Washington State coastal zone management program. State programs, and specifically state actions in pursuit of the intent of federal consistency, shall be directed to the accomplishment of this objective. Further, it is the policy of the Washington coastal zone management program to minimize adverse effects in the area, and to seek mitigation of unavoidable adverse impacts.

Policy on the Expansion of Existing Oil Terminal Facilities

The use of a single offloading site at Port Angeles has the dual purpose of lessening vessel traffic in the inland marine waters and the number of transfer points with their associated spill problems. The objectives of this major proposal are to reduce the risk factor of a major oil spill by reducing the number of transfer sites, the amount of vessel traffic in constricted channels, and the amount of environmentally sensitive marine waters to be exposed to the risk.

The offloading facility and transportation system at Port Angeles shall be designed to include provisions to supply existing refineries in Whatcom

(*Note: This insert appears on page 136 of the Washington Coastal Management Program.)

and Skagit Counties. Unless specific plans and firm commitments to connect to the Port Angeles facility are included, individual expansions to existing offloading facilities or proposals to deepen channels to accommodate deeper draft vessels are considered inconsistent with the single terminal concept as incorporated in the state coastal zone management program.

ATTACHMENT C:

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BIBLIOGRAPHY

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ATTACHMENT D:

Title 33 - Navigation and Navigable Waters
Chapter 1 - Coast Guard, Department of Transportation
Part 161 - Vessel Traffic Management - Puget Sound

[4910-14]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 78-040]

PART 161—VESSEL TRAFFIC MANAGEMENT

Puget Sound

AGENCY: Coast Guard, Department of Transportation.

ACTION: Interim Navigation Rule.

SUMMARY: This interim rule prohibits entry of oil tankers in excess of 125,000 deadweight tons into the U.S. waters of Puget Sound east of Discovery Island Light and New Dungeness Light. On March 6, 1978, the U.S. Supreme Court declared a similar prohibition of the State of Washington to be unconstitutional. This interim rule is necessary pending preparation of additional Vessel Traffic Service (VTS) regulations in order to provide a continuing scheme for controlling vessel operation in Puget Sound and to avert reduction in environmental protection that could otherwise occur.

EFFECTIVE DATE: This rule is effective on March 14, 1978, and will remain in effect until September 9, 1978. Extended to June 30, 1979

ADDRESS: Comments on these regulations may be submitted to Commandant (G-CMC/81), (CGD 78-040), U.S. Coast Guard, Washington, D.C. 20590. Comments will be available for examination at the Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Captain George K. Greiner, Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-1477.

SUPPLEMENTARY INFORMATION: Persons wishing to comment on this rule may do so by submitting comments to the address listed above. Commenters should include their names and addresses, identify the docket number of this rule (CGD 78-040), and give reasons for their comments. Based upon comments received, the rule may be modified or supplemented. This rule is issued without prior opportunity for public comment on its contents. Immediate action is required in order to preserve the size limitations previously in effect in Puget Sound and to avert reduction in environmental protection that could otherwise occur while comprehensive Coast Guard rule making is in progress. Accordingly, a delay in publishing this rule would be contrary to the public interest.

Drafting Information

The principal persons involved in drafting this rule are: Rear Admiral Sidney A. Wallace, Project Manager, Office of the Secretary, and William R. Register, Project Attorney, Office of the Chief Counsel, USCG.

Background

1. I am issuing this rule as an interim measure under the authority of the Ports and Waterways Safety Act of 1972 (33 U.S.C. 1221-27). The rule is necessary to maintain the current de facto level of protection of the navigable waters of Puget Sound and adjacent waters in the State of Washington, and the resources therein, from environmental harm resulting from vessel or structure damage, destruction, or loss until the possible issuance of additional vessel traffic service regulations.

2. The United States Supreme Court on March 6, 1978, in the case of *Ray* v. *Atlantic Richfield Co.*, No. 76-930 declared unconstitutional several provisions of the State of Washington Tanker Law directed to preventing environmental damage by oil tankers in Puget Sound. Among the provisions struck down by the Court was one prohibiting oil tankers exceeding 125,000 deadweight tons from entering Puget Sound. While the litigation has been in progress, tanker operators refrained from using oil tankers exceeding 125,000 deadweight tons in Puget Sound. For reasons outlined hereafter, I believe it to be necessary to continue this practice on a temporary basis.

3. Although there are certain operating restrictions currently in effect for Rosario Strait because of navigational hazards peculiar to that area, the Coast Guard has not yet taken action to limit the size of vessels entering Puget Sound. The Coast Guard has been conducting studies necessary to determine the need for, and the substance of, possible additional vessel traffic service regulations. Under Title I of the Ports and Waterways Safety Act, the Secretary of Transportation and his delegees are required to consider the existence of state and local practices and customs in determining whether it is necessary or desirable to exercise authority under the Act. Until the Washington statute was declared unconstitutional, it was not necessary to exclude larger tankers under the authority of the Ports and Waterways Safety Act of 1972 while the Coast Guard review was pending.

4. The Coast Guard will now draw its studies to a tentative conclusion and initiate rulemaking action. An advance notice of proposed rulemaking will be published in the very near future, and opportunity for participation in the rule making will be provided to the public, including State and local governments, representatives of the marine industry, port and harbor authorities, environmental groups, and other interested parties. While rule making is in process, this 180-day emergency rule will continue, as a matter of Federal action, the similar restrictions of the State of Washington regarding oil tanker traffic in Puget Sound.

Action

Therefore, under the authority vested in me by 33 U.S.C. 1221 to control vessel traffic in areas I determine to be especially hazardous, I am issuing the following interim rule as an amendment to Part 161:

Subpart B—Vessel Traffic Services

Appendix A—Puget Sound Interim Navigation Rule

(a) No person may operate or cause or authorize the operation of any oil tanker in excess of 125,000 deadweight tons bound for a port or place in the United States in waters of the United States lying east of a straight line extending from Discovery Island Light to New Dungeness Light and to all points in the Puget Sound area north and south of these lights.

(b) Nothing herein affects the exercise by the Commandant of the Coast Guard, the Coast Guard Thirteenth District Commander, the Coast Guard Captain of the Port, Seattle, or the Commanding Officer of the Puget Sound Vessel Traffic Service, in respect to oil tankers of less than 125,000 deadweight tons on Puget Sound, of the authority which has been delegated to them under the Ports and Waterways Safety Act of 1972.

(c) This rule is effective immediately and shall remain in effect until September 9, 1978.

(33 U.S.C. 1224.)

Dated: March 14, 1978.

Brock Adams,
Secretary of Transportation.

[FR Doc. 78-7740 Filed 3-22-78; 8:45 am]

ATTACHMENT E:

Federal Register, Vol. 43, No. 59
March 27, 1978
Advance Notice of Proposed Rulemaking
Department of Transportation,
U.S. Coast Guard
Tank Vessel Operations - Puget Sound

[4910-14]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Subchapter P]

[CGD 78-041]

PUGET SOUND

Tank Vessel Operations

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering issuing regulations governing the operation of tank vessels in the Puget Sound area. This action is taken because on March 6, 1978, the U.S. Supreme Court declared several sections of the State of Washington Tanker Law concerning tanker operation in Puget Sound unconstitutional on the basis of Federal preemption of state law. The Coast Guard is studying the entire scope of tank vessel operation in the Puget Sound area in order to arrive at the best solution for protection against environmental harm resulting from vessel or structure damage, destruction, or loss, and is seeking comments to assist it in making a determination.

DATES: 1. *Comments* must be received on or before May 12, 1978. 2. *Public Hearing:* The Coast Guard will hold a public hearing on April 20-21, 1978, beginning at 9 a.m. in the north auditorium, 4th floor, Federal Building, 917 Second Avenue, Seattle, Wash.

ADDRESSES: Comments should be submitteed to Commandant (G-CMC/81), (CGD 78-041), U.S. Coast Guard, Washington, D.C. 20590. Comments will be available for examination at the Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Captain George K. Greiner, Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590, 202-426-1477.

SUPPLEMENTARY INFORMATION: Interested persons are invited to submit written views, data, or arguments concerning this advance notice. Written comments whould include the docket number CGD 78-041) and the name and address of the person submitting the comment. All comments received before the expiration of the comment period will be considered before further action is taken.

Interested persons are invited to attend the hearing and present oral or written statements on these proposals. It is requested that anyone desiring to make comments notify Captain Greiner at least ten days before the scheduled date of the public hearing, and specify the approximate length of time needed for the presentation. Comments at the public hearing will normally be heard in the order the request to comment is received. It is urged that a written summary or copy of the oral presentation be included with the request.

DRAFTING INFORMATION

The principal persons involved in drafting this advance notice are: Commander Robert Janecek, Project Manager, Office of Marine Environment and Systems, and Edward J. Gill, Jr., Project Attorney, Office of the Chief Counsel.

BACKGROUND

The Coast Guard originally issued regulations for the Puget Sound Vessel Traffic Service on July 10, 1974 (39 FR 25430). Minor changes were made on June 9, 1977 (42 FR 29481). The Service was established because of congested vessel traffic and hazardous weather conditions.

The State of Washington Tanker Law (Chapter 125, Laws of Washington, 1975, First Extraordinary Session, Wash. Rev. Code § 88.16.170 *et seq.*) was adopted to regulate certain aspects of the design, size, and movement of tank vessels carrying oil in Puget Sound.

The United States Supreme Court on March 6, 1978, in *Ray* v. *Atlantic Richfield Co.* (No. 76-930) declared several provisions of the State of Washington Tanker Law unconstitutional based on Federal preemption of state law.

On March 14, 1978 (published in the FEDERAL REGISTER on March 23, 1978), the Secretary of Transportation issued an interim navigation rule prohibiting the operation of oil tankers in excess of 125,000 deadweight tons bound for a port or place in the United States in waters of the United States lying east of a straight line extending from Discovery Island Light to New Dungeness Light and to all points in the Puget Sound area north and south of these lights ("designated waters"). This interim rule, which is effective through September 9, 1978, was considered necessary to maintain the de facto level of protection of the navigable waters of Puget Sound and adjacent waters in the State of Washington, and the resources therein, until the possible issuance of additional regulations.

In this advance notice, the Coast Guard is soliciting comments and suggestions from interested parties concerning possible approaches the Coast Guard can take to continue and enhance the protection of the designated waters and vessels operating therein.

FACTORS TO BE CONSIDERED BY THE COAST GUARD

Section 102 of the Ports and Waterways Safety Act of 1972, (33 U.S.C. 1222), requires full consideration of the wide variety of interests which may be affected by the exercise of regulatory authority under the Act. In determining the need for, and the substance of, any rule or regulation the following factors must be considered—

(1) The scope and degree of the hazards;

(2) Vessel traffic characteristics including minimum interference with the flow of commercial traffic, traffic volume, the sizes and types of vessels, the usual nature of local cargoes, and similar factors;

(3) Port and waterway configurations and the differences in geographic, climatic, and other conditions and circumstances;

(4) Environmental factors;

(5) Economic impact and effects;

(6) Existing vessel traffic control systems, services, and schemes; and

(7) Local practices and customs, including voluntary arrangements and agreements within the maritime community.

Specific comments and information concerning these factors, as they apply to Puget Sound and adjacent waters are especially desired.

POSSIBLE REGULATORY APPROACHES

The regulations under consideration would be applicable to tank vessels bound for a port or place in the United States in waters of the United States lying east of a straight line extending from Discovery Island Light to New Dungeness Light and to all points in the Puget Sound area north and south of these lights.

The Coast Guard is aware that various approaches may be taken in possible regulation of tank vessels. Several possible approaches are set out below. The Coast Guard solicitis comments on these approaches, but also welcomes comments and suggestions concerning any other reasonable alternatives including comments concerning the necessity for any regulatory actions at all. Comments are specifically requested on the possible benefits or adverse effects of these regulatory approaches, or on any alternatives being suggested.

The Coast Guard is considering the following as possible approaches:

1. Specifying times of entry into, movement within, or departure from the designated waters.

2. Limiting the size of tank vessels utilizing one or more of the following criteria:

(a) Gross tonnage.

(b) Deadweight tonnage.
(c) Length of vessels.
(d) Breadth of vessels.
(e) Tank size.
(f) Keel clearance.

3. Limiting the speed of tank vessels.

4. Issuing regulations based on the particular operating characteristics, or equipment of the vessel including the number and type of propellers, and the main and emergency propulsion, steering and navigational capabilities of the vessel.

5. Issuing regulations which restrict tank vessel operation during hazardous weather conditions or in hazardous areas.

6. Issuing requirements for tug assistance or tug escort for tank vessels.

7. Issuing regulations governing pilotage requirements.

8. Appraising possible vessel controls and/or requirements based upon specific routes to be taken by the vessels having in mind particular destinations.

Comments are particularly solicited concerning vessel size and its relation to maneuvering capabilities of the vessel; whether recommended limitations should be applied singularly or in combination with other criteria; and which areas within the designated waters are considered especially hazardous to navigation or environmentally sensitive.

(Sec. 104, Pub. L. 92-340, 86 Stat. 424 (33 U.S.C. 1224); 49 CFR 1.46(n)(4).)

O. W. Siler,
Admiral, U.S. Coast Guard
Commandant.

March 22, 1978.

[FR Doc. 78-7926 Filed 3-24-78; 8:45 am]

ATTACHMENT F:

CORRESPONDENCE REGARDING PROGRAM
STATEMENT ON STATE DISINTEREST
IN BEING A TRANSSHIPMENT SITE

A. Letter from Robert W. Knecht to
Wilbur G. Hallauer, October 17, 1978

B. Letter from Wilbur G. Hallauer to
Robert W. Knecht, October 19, 1978

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Rockville, Maryland 20852
Office of Coastal Zone Management
3300 Whitehaven Street, N. W.
Washington, D. C. 20235

October 17, 1978

Mr. Wilbur Hallauer
Director
Department of Ecology
Olympia, Washington 98504

Dear Mr. Hallauer:

As you know, the Office of Coastal Zone Management has been processing the request of the State of Washington to delete from its coastal zone management program the policy to locate an oil port facility only at Port Angeles or west. The draft environmental impact statement on this action is nearly ready, but a question has arisen regarding the policy which will remain if the Port Angeles policy is deleted.

In the transcript of the public hearings of October 4, 5, and 6, 1977, Craig S. Ritchie, Prosecuting Attorney for Clallam County, notes:

> "on page 17 of the program there is a statement that says: 'Prevailing State policy at this time indicates that the State is not interested in becoming a major petroleum processing center or transportation terminus for a major new pipeline to the midwest ...' " (October 4, 1977, p. 13).

Mr. Ritchie goes on to point out that if the Port Angeles policy is deleted, "all you are left with is a prevailing State policy that the State is not interested in becoming a major petroleum processing center or transportation terminus," (October 4, 1977, p. 18).

We believe that there may be considerable confusion if the purpose and enforceability of this statement is not clarified for the record. Since the words "State policy" imply enforceability, and since we are not aware of any State law that could establish enforceability, it is important to clarify this matter as part of the environmental impact statement on the amendment.

To this end, we will need a clear statement from the Department of Ecology regarding any support in law that this "policy" may have. Absent such an enforceable policy, an equally clear explanation is needed that this statement of "policy", in fact, was intended to describe the writer's impression of popular sentiment in Washington regarding petroleum transshipment. The letter clarifying this question will be included in the EIS to support our evaluation that the subject statement is not an enforceable policy and may not be used for any Federal consistency review.

Please let us know your views on this as soon as possible so we can continue to process your request for the amendment.

Sincerely,

Bob Knecht

Robert W. Knecht
Assistant Administrator
for Coastal Zone Management

STATE OF
WASHINGTON

Dixy Lee Ray
Governor

DEPARTMENT OF ECOLOGY
Olympia, Washington 98504 206/753-2800

October 19, 1978

Mr. Robert W. Knecht
Assistant Administrator
for Coastal Zone Management
National Oceanic and Atmospheric
Administration
Office of Coastal Zone Management
3300 Whitehaven Street, N.W.
Washington, D.C. 20235

Dear Mr. Knecht:

In response to your letter dated October 17, 1978, I wish to clarify the language which appears on page 17 of the 1976 Washington State Coastal Zone Management Program. You have raised questions as to whether this statement comprises a substantive state policy or program authority of the Washington Coastal Management Program. The statement in question is found under the description of the "Northern Strait and Puget Sound Petroleum Transfer and Processing Area," one of ten identified "Areas of Particular Concern" in the state's Coastal Zone Management document. The language in question is provided below:

> "Prevailing state policy at this time indicates that the state is not interested in becoming a major petroleum processing center or transportation terminus for a major new pipeline to the midwest, though how much additional petroleum traffic would actually be generated is not entirely clear."

As you will note, this language appears within the chapter of the Coastal Zone Management document which strictly provides a narrative description of the state's coastal zone and its attendant resources. This chapter is entitled "Chapter II, Washington State's Coastal Zone" and covers an overview of coastal resources and Areas of Particular Concern. Subsequent chapters in the document deal specifically with the program authorities and substantive policies which together combine to fulfill the requirements for a state coastal zone management program.

The language in question was obviously not intended as a statement of program authority or state policy in the context in which it was made. Perhaps it is unfortunate that the term "policy" was used. The statement was made with the specific intent to describe the general attitude which seemed to prevail at the time it was written with respect to the "Northern Strait and Puget Sound Petroleum Transfer and Processing Area" Area of Particular Concern.

The language was included for the express purpose of supporting the argument that this particular area was worthy of consideration as an Area of Particular Concern, with unique resources in need of more intense consideration during Coastal Zone Management program implementation. At no time did we, nor do we now, consider this descriptive statement a reiteration of a formal state policy, nor a Coastal Zone Management program authority for any legal purpose, including implementation of federal consistency under §307 of the Coastal Zone Management Act. If we had intended this to be the case, we certainly would have made such a statement in more explicit terms and have included it elsewhere in the program document.

We neither see the need nor intend to take action to delete or modify the language on page 17 at this time. In the future we will clarify this along with other portions of the document.

I trust the above clarifies our position and original intent with respect to the referenced language. If you have any further questions please do not hesitate to call upon me.

Yours truly,

Wilbur G. Hallauer
Director

WGH:kb